Zilla Court Decisions.—

ZILLA COURT DECISSIONS

15.1.10



ZILLAH BACKERGUNGE.

PRESENT: W. J. H. MONEY, ESQ., JUDGE.

THE 13TH JANUARY 1849.

No. 29 of 1846.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 27th May 1846.

Anund Moee and Gourkishore, and afterwards Rajnat Ghoo, son of Anund Moee, (Plaintiffs,) Appellants,

versus

Mohesh Chunder Doss, Tarnee Dibeea, and after her death her representative, Nobin Chunder, Radha Nath Chuckerbuttee, Doorga Naraen Bhuttacharj, Raj Kishore Kunjbullee, Ramdial Chuckerbuttee, Ram Tunnoo Chuckerbuttee, Sona Ram Chuckerbuttee, Roop Chunder Chuckerbuttee, and after his death his representative, Sona Ram Chuckerbuttee, Poornoo Chunder Chuckerbuttee, Kishen Naraen Chuckerbuttee, Bulram Chuckerbuttee, Radha Kishen Chuckerbuttee, Neelmonee Dibeea, wife of Ram Soonder Chuckerbuttee, deceased, the wife of Ruttun Kishen Chuckerbuttee, deceased, the wife of Chytun Chunder Chuckerbuttee, deceased, the wife of Bindrabun Chunder Chuckerbuttee, deceased, the wife of Gour Chunder Chuckerbuttee, and in a supplementary plaint, Ambeeka Dibeea, wife of Bindrabun Chunder Chuckerbuttee, and Tarnee Pershad Chuckerbuttee, his own guardian of Bhugowan Chunder and Juggut Chunder Chuckerbuttee, proprietors, (Defendants,) Respondents.

THE plaintiffs sued to amend a miscellaneous order and effect the sale of a 10 annas, 13 gundahs, 1 cowree, 1 krant share of an owsut talook, laying their suit at 600 rupees. They represented that their ancestor, Nub Kishore Ghoo, obtained a decree against Mohesh Chunder Doss, for a debt of Sicca rupees 4,755, 14 annas, 8 gundahs, and, after his death, the plaintiff, in carrying out the execution of the decree, caused to be lotted for sale a 10 annas, 13 gundahs, 1 cowree, 1 krant share of an owsut talook, called Kishen Chunder Doss, situated in talook Ram Chunder Chuckerbuttee, in jooar Kiddurpoor Baherchur, a separation from pergunnah Chunderdeep, the property of Mohesh Chunder Doss, when he, through Tarnee Dibeea, the wife of his gooroo, presented objections, and claimed the property as Tarnee Dibeea's, on the strength of her purchase. The principal sudder ameen, consi-

dering the claim valid, stopped the sale, and this summary order was confirmed by the judge, and subsequently by the Sudder Dewanny Adawlut. The plaintiffs further alleged that, although Tarnee Dibeea produced a kubala, dated the 15th Bhadoon 1240, and three witnesses in support of that document, the sale was illegal, because the debtor was surety for the treasurer of the Backergunge collectorate, and could not therefore alienate his property; independent of which, out of these three witnesses, one Radha Madub Goopt was a servant of Mohesh Chunder Doss, and the other two, Muneer and Massad, were his ryuts: on these grounds, therefore, the plaintiffs sued to effect the sale of the share of the owsut talook alluded to, in satisfaction of their claim against Mohesh Chunder Doss.

Tarnee Dibeea replied, that she had bought the land by a deed of sale, dated the 5th Bhadoon 1240, and was in regular possession, and the principal sudder ameen had, in a miscellaneous order, with reference to Constructions Nos. 1017 and 588, upheld her purchase, and released the property from sale; she stated further that the property pledged by Mohesh Chunder Doss, as security for the collector's treasurer, was a share of talook Sheeb Chunder Doss, and had no connection with the land in question.

The plaintiffs, in their replication, insisted that the possession of the land by Tarnee Dibeea was fictitious; that in a former case some land, belonging to Mohesh Chunder Doss, had been claimed by his gooroo's daughter, and in this instance the gooroo's wife has adduced objections.

The defendant, in her rejoinder, alluded to her dakhilas, and declared that the sale by Mohesh Chunder Doss was fully authorised by the Constructions alluded to.

Kishen Naraen Chuckerbuttee, Bulram Chuckerbuttee, Oonoopoorna Dibeea, Jamoona Dibeea, Radha Kishen Chuckerbuttee, Poorna Chunder Chuckerbuttee, Raj Kishore Kunjbullee, and Doorga Churn, proprietors, supported the claim of Tarnee Dibeea, by virtue of her purchase. Sona Ram Chuckerbuttee, Ramtunoo, Ramdyal, Koroona Moyee, and Radha Nath declared that Mohesh Chunder was actually in possession, though the name of Tarnee Dibeea was apparent.

The plaintiffs and defendants filed the documents noted in the margin, and both parties adduced oral testimony, the appellants to prove the possession of Mohesh Chunder Doss, and the respondent to prove her *bonâ fide* purchase.

Filed by the Plaintiffs.

Copy of proceeding of the Sudder Dewanny Adawlut, dated 17th January 1842.

Ditto of principal sudder ameen of Backergunge, dated 18th March 1840.

Ditto judge of ditto, ditto 4th August 1841.

Ditto roobacaree, Sudder Dewanny Adawlut, dated 17th April 1838.

The principal sudder ameen, with reference to the kubala, which was registered, the evidence of the witnesses, Moneer, Moosad,

Copy of roobacaree, sudder ameen of Backergunge.

Ditto roeedad of Ram Chunder, ameen, dated 6th Jyte 1247.

Ditto roobacaree, principal sudder ameen, dated 14th April 1847.

Ditto of security bond, given by Mohesh Chunder Doss.

Ditto of petition of Raj Coomar Pandee, dated 7th June 1837.

Ditto ditto of Raj Kishore Chund, gomashtah of Mohesh Chunder Doss.

Ditto ditto of Rubbee Lochun Goopt, gomashtah of Ram Dowlall Doss and Kumul Chunder, dated 28th December 1832.

Ditto wakalutnamah of Tarnee Dibeea.

Ditto general power of attorney given by Mohesh Chunder Doss to Raj Kishore Chund, dated 16th Maugh 1232.

Ditto wakalutnamah, given by Ooma Dibeea in 1247.

Ditto copies of the proceedings of the judge's court, dated 27th February 1847.

Filed by the Defendants.

A dakhila for 1249, signed by Sumboonath Chatterjeea, in which is mentioned talook Ram Chunder Chuckerbuttee, owsut talook Kishen Chunder Doss, hissa 10 annas, 15 gundahs, 1 cowree, and 1 krant, khureeda owsut talook Tarnee Dibeea, mozaffat Mohesh Chunder Doss.

Ditto for 1251, copy of judge's roobacaree, dated 18th April 1840.

Ditto deposition of Radha Madub Goopt: a dakhila for 1246, signed by Sumboonath Chatterjeea.

A kubala, dated the 5th Bhadoon 1240.

A kaboolecut given to Tarnee Dibeea by Meer Goolam Isman, dated 14th Sawun 1241.

Again a dakhila, dated 5th Assar 1241, signed by Obhya Churn Sein, surberakar.

Ditto, dated 1st Chyte 1244, signed by Poorna Chunder Chuckerbuttee.

Ditto 15th Chyte 1245.

Ditto a confirmatory grant, dated 2nd Jyte 1241, signed by Roop Chunder Chuckerbuttee.

A settlement, dated 3rd Bhadoon 1243, copies of the paper of Halaloodeen, ameen.

Rada Madub Goopt, Mungul Shureef, and Dhunnye Sheekdar, and Sona Ram Chuckerbuttee, one of the proprietors, considered the purchase of Tarnee Dibeea and her possession in the mofussil fully established; and being of opinion that the land in question was never specially pledged as security, and therefore, under Constructions Nos. 1017 and 588, Mohesh Chunder Doss, had power to alienate the same, he dismissed the claim of the plaintiffs.

The appellants recapitulated the argument used before, and observed that the principal sudder ameen had merely alluded to one proprietor, and had taken no notice of the replies of the others. This appeal was admitted by the former judge, and notice issued to the respondent, who has reiterated his former objections, and added that the plaint was defective, inasmuch as the appellants had not sued to cancel the summary order upon which the whole transaction was based.

In this case the question for consideration is whether the sale to Tarnee Dibeea was really a *bonâ fide* transaction, and if so, whether Tarnee Dibeea was and is in regular possession. The principal sudder ameeen has stated that the possession of Tarnee Dibeea was proved by the deposition of Sona Ram Chuckerbuttee, yet on looking at that deposition I do not find that any thing was said about possession, the expression used is "Tarnee Dibeea owsut talook," and in his reply in this case Sona Ram has distinctly said that, although Tarnee

Copy of deposition of Sona Ram Chuckerbuttee, dated 18th Magh 1251.
Ditto mofussil papers, signed by Raj Kishore Kunjbullee and Doorga Churn, written by Goluk Chunder.

Dibeea's name was apparent as purchaser, Mohesh Chunder Doss *was in possession;* and although some of the proprietors, in their replies, have declared Tarnee Dibeea to be in possession, yet the kubala, the very foundation of that possession, has not been satisfactorily attested—only one witness mentioned in the deed, Radhamadub Goopt, an interested party and a servant of Mohesh Chunder Doss, having deposed to its validity. Besides which, on looking at the papers in the miscellaneous case, it appears that one of the confirmatory grants given to Tarnee Dibeea in connection with the owsut talook by Joychunder, Raj Kishore Kunjbullee, and Doorga Churn Chatterjeea, was written by Kewul Kishen Chatterjeea; and Kewul Kishen, as well as other witnesses, have distinctly deposed on oath to the fact of Mohesh Chunder Doss being in possession, notwithstanding Tarnee Dibeea's name appears as purchaser. Considering moreover the date of the kubala, eight days prior to the decree, and the date of the registry, eight days afterwards, and with reference to the two other instances in which, on the occasion of Mohesh Chunder Doss' property being lotted for sale, objections were adduced by Ooma Dibeea and Radha Madab Goopt similar to that now urged by Tarnee Dibeea, and which objections were overruled, I confess I cannot give the slightest credit to the kubala in question as being a *bonâ fide* transaction; and there are strong grounds for believing that Mohesh Chunder Doss has fraudulently introduced the name of Tarnee Dibeea with a view to defraud his creditor. Under these circumstances the appeal is decreed, the order of the principal sudder ameen reversed, and the sale of the 10 annas, 13 gundahs, 1 cowree, 1 krant share of the owsut talook Kishen Chunder Doss, the property of Mohesh Chunder Doss, will take due effect. The respondents, Nobin Chunder and Mohesh Chunder, will pay the costs of both courts.

ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, ESQ., OFFICIATING JUDGE.

THE 2ND JANUARY 1849.

No. 5.

Appeal from a decision of the Principal Sudder Ameen of Bancoora, Chunder Seekur Chowdry, dated 22nd February 1848.

Jala Mookee Debeea, (Defendant,) Appellant,

versus

Gokul Chund Takore and others, (Plaintiffs,) Respondents.

THE plaintiff sues to enhance the rate of jumma of 144 beegahs 19 cottahs of land. The defendant (appellant) asserts her right to hold beegahs 99-15-6½ of land in virtue of a deed of sale executed in favor of her husband, Ram Mohun Mookerjea, by Ram Jeewun Mookerjea; but denies possession to the extent prescribed in the title deed; for the difference, viz. beegahs 16-3, appellant has instituted a separate suit against the plaintiffs.

The principal sudder ameen, deeming the points involved in this and case No. 46 identical, has investigated them together. He gives a verdict for plaintiff in this suit to the extent of rupees 85-7-9, and dismisses that of defendants (No. 46) in failure of proof. The principal sudder ameen has, as would appear from the records of this case, drawn conclusions from false premises. The grounds of his decision are based on the report of the ameen deputed to make the local inquiry as to the extent of defendant's (appellant's) possession and the rate for which she was liable. The ameen represents that appellant is in possession of beegahs 59-3-12½ of land, *inclusive* of the beegahs 16-3, the quantity for which appellant in case No. 46 sues for possession, and records his opinion that defendant (appellant) is liable for a jumma of rupees 85-7-9, the rate fixed by arbitrators on the spot. The ameen's opinion (which he was not warranted in offering) is opposed to the evidence of the witnesses examined by him; the latter distinctly states that Ruttee Monjeree is the party in possession, the name of the defendant (appellant) never being mentioned at all.

The ameen's conclusions are, as I said before, opposed to the evidence, and therefore worthless, and the decision of the lower court, based as it is on such conclusions, cannot stand. The appeal is accordingly admitted, the decision of the principal sudder ameen set aside, and the case forwarded to the sudder ameen of this zillah,

who will depute a confidential officer to ascertain what quantity of land is actually in possession of the appellant, and will then proceed to fix such a rate of jumma as may appear equitable. The cost of stamp to be refunded in the usual manner.

THE 2ND JANUARY 1849.

No. 9.

Appeal from a decision of the Principal Sudder Ameen of Bancoora, Chunder Seekur Chowdry, dated 22*nd February* 1848.

Jala Mookee Debeea, (Plaintiff,) Appellant,

versus

Gokul Chund Takore and others, (Defendants,) Respondents.

THE plaintiff sues for possession of beeghas 16-3 of land.

The issue of this case must depend in a great measure on the result of the inquiry directed to be made in case No. 5. The officer, therein deputed by the lower court, will ascertain what quantity of land the plaintiff holds in virtue of her kuballah, and whether that now in dispute does or does not form part of her present holding. The appeal is accordingly admitted, and the case sent with No. 5 to the sudder ameen, who will proceed with the investigation in the manner indicated. The cost of stamp to be refunded in the usual manner.

THE 4TH JANUARY 1849.

No. 82.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 7*th February* 1847.

Mahabarut Sircar, (Plaintiff,) Appellant,

versus

Khetur Mohun and others, (Defendants,) Respondents.

THE plaintiff sues to enforce the registration of a deed of absolute sale. The defendant, Khetur Mohun, admits having executed the deed of transfer, but, in failure of plaintiff's fulfilling his part of the agreement, having paid defendant only 6 rupees of the amount loan for which the kuballah was given, refused to attend to have it registered. The other defendants at first denied all knowledge of the transfer, which the defendant, Khetur Mohun, admitted, but subsequently, on the 13th August 1847, confessed to plaintiff's having paid them 26 rupees, which amount was to be repaid by instalments. On the 21st September following, the said defendants again filed a petition, recalling the said confession of judgment, as it had been made with a view to save the plaintiff's character, on his pro-

mising to make good to them the difference of 20 rupees, which promise he failed to fulfil. The moonsiff decrees in plaintiff's favor for 6 rupees.

The plaintiff (appellant) is dissatisfied with this award, and claims the whole amount of 26 rupees for which defendants (respondents) confessed judgment. The moonsiff has lost sight of the object for which plaintiff sues. In his plaint he seeks to enforce the registration of a deed of absolute sale, and the moonsiff's investigation should have been confined to this point. He (the moonsiff) has given a verdict for plaintiff for that which he has not sued to recover. The appeal is accordingly admitted, and the case remanded to the moonsiff, with a view to his pronouncing judgment on the point indicated in the plaint. The cost of stamp used in preferring this appeal, to be refunded in the usual manner.

THE 9TH JANUARY 1849.

No. 213.

Appeal from a decision of the Moonsiff of Cutwa, Elahi Buxsh, dated 2nd July 1846.

Ruttun Monee Bewah, (Plaintiff,) Appellant,

versus

Kudarnath Chowdhry and others, (Defendants,) Respondents.

THIS is an action for compensation for loss sustained by a sale of property illegally distrained. The plaintiff represents that defendants distrained and sold her property under the provisions of Regulation V. of 1812, on the plea that she was a defaulting tenant of certain lands in Narainpore, of which they (the defendants) are the proprietors. She (the plaintiff) denies her occupancy, and that she is, or ever was, a tenant of defendants. The defendants plead justification, and in evidence thereof file an agreement, said to have been executed by plaintiff, and jumma-wasil-bakee accounts showing the plaintiff a defaulter. The moonsiff, deeming defendants' plea good, dismissed the case; and his decision was affirmed in appeal, and a similar result attended a special appeal. Appellant applied for a review of judgment which was allowed, she having established to the satisfaction of the court that the lands in Narainpore, of which the defendants declared her to hold possession, had subsequently to the date on which she was cast in special appeal, been the subject of litigation in a case before the moonsiff of Cutwa, (Brimomoe Debeea *versus* Khoodeeram Ghose and others,) wherein the defendants were declared liable for rent for the same land and for the same years, for which the plaintiff had been made liable, and her property sold in liquidation.

The moonsiff rejects all the evidence in behalf of plaintiff as unworthy of belief, and considering her possession proved by the

kubooleeut, the gomashtas' testimony certifying the accounts, and the report of the ameen, dismisses the case. The kubooleeut does not tally with the facts stated by defendants in their reply; it is therein recorded that their interests in Narainpore consist of a 3½ annas share; in the kubooleeut, the extent of their rights is not defined, the defendants term themselves share-holders; if the former be correct, the latter must be the contrary, and *vice versâ*. The kubooleeut is written on plain paper, and the names of the attesting witnesses are in the same writing as the body of the deed; and the whole have evidently been executed by one and the same party; the testimony of the witnesses, who can neither read nor write, who certify the said deed, cannot be credited. Again, the evidence of the gomashtas, certifying the accounts, is valueless, opposed as it is to the purport of defendants' reply. It is there stated that defendants hold Narainpore in joint tenancy with other share-holders, and that the collections are made by such of the share-holders as may be on the spot, and who divides and distributes the former; the inference from which is, that there is no gomashta attached to the estate, the duties of that office falling on the proprietors themselves. Lastly, it is on record that two distinct persons have been sued in two separate suits, by parties who have no connection with each other, for arrears of rent accruing on the same land for the same period; one, or both these suits, must have originated in fraud. For the reasons above given, I conceive the judgment of the lower court to have been based on false premises; it is therefore reversed, and the appeal decreed with costs.

THE 9TH JANUARY 1849.

No. 4.

Appeal from a decision of the Principal Sudder Ameen of West Burdwan, Chunder Seekur Chowdhry, dated 5th February 1848.

Moharaja Mahtab Chunder Bahadoor, (Plaintiff,) Appellant,

versus

Gopaul Mookerjeea and others, (Defendants,) Respondents.

THIS is an action to recover a balance of rent accruing on lot Zeelpore, laid at rupees 340-7-4.

It is elicited from the records of the case that the defendant, Gopaul Mookerjeea, was a defaulter in the talooka aforesaid in the year 1241 B. S., in liquidation of which the said talooka was sold in Jeit 1242. The amount purchase money being insufficient to meet the entire balance, this suit was filed to recover it; whilst in progress, lot Mazkooree was sold under Regulation VIII. of 1819, for arrears of rent; and the plaintiff moved the court to attach the surplus sale proceeds, under the provisions of Regulation II. of 1806, as belong-

ing to the defendant, Gopaul, and orders were issued accordingly. Upon this Jyegopaul, a third party, appeared and laid claim to the surplus sale proceeds of lot Muzkooree as putneedar. The lower court entered into the merits of Jyegopaul's claims, and in failure of the plaintiff to prove that the defendants, Gopaul and Jyegopaul, were identical, pronounced them valid. It is from this portion of the principal sudder ameen's decision that plaintiff prefers this appeal. He argues that the fact of whether Jyegopaul and Gopaul are one and the same party, must be investigated when the execution of decree is applied for. The Sudder Court have already ruled in a case exactly similar to that under review, when a sale of property is applied for after fulfilment of the conditions of Section 5, Regulation II. of 1806, that the claims of opposing parties must *then* be enquired into, and that course in the present instance must be adopted. The appeal is accordingly decreed, and the decision of the lower court modified with reference to the foregoing remarks; the defendant, Gopaul, being responsible for costs.

THE 9TH JANUARY 1849.

No. 15.

Appeal from a decision of the Sudder Ameen, Moulvee Mahomed Saem, dated 24th July 1847.

Juggut Mohinee Dassee, (Plaintiff,) Appellant,

versus

Parusnath Chowdhry and others, (Defendants,) Respondents.

THE plaintiff sued to enhance the rent of beegahs 212-11 of land from the year 1252 B. S., fixing the rate Company's rupees 475-12-9 annually.

This case was remanded on the 19th July 1848, on special appeal, by the Sudder Court (*vide* page 694 of the Decisions of the Sudder Dewanny Adawlut for July.) The Superior Court observes: the judge's decision is imperfect, and his basis of calculation cannot be admitted, for it does not appear that the decree respecting the 51 beegahs 4 cottahs was ever carried into execution, or is any thing more than a dead letter to the present day. The Court further adds: "Now the first question which the zillah courts have to decide is whether the lands are liable to enhancement of rent, and if they are, secondly, to what extent? On the first point, I find no distinct opinion, nor any allusion to the nature of the tenures held by the defendants. In regard to the second point, if the lands are declared liable to enhancement, the assessment must be made according to the

pergunnah rates, which the judge must ascertain by inquiry." In reference to the decree for 51 beegahs 4 cottahs, it is to be observed that the defendant in the present case quoted it in his reply, as evidence of the rate for which he was liable, adding that the rate therein fixed could not be disturbed. It is true there is no proof of the decree having been executed, but as the defendant quotes it in support of his argument, and as it seems to have been affirmed on special appeal, the inference is, that the zemindar, the plaintiff, did in virtue of it enhance the rate, and that the defendant agreed to pay it, without the usual process of suing it out having been observed.

The question of liability to enhancement of rent was not raised by the defendant; on the contrary, in his reply, he states that his predecessor acquired the lands by purchase, proving thereby that he had no claims as an hereditary khood khast ryut, and it did not appear requisite therefore to adjudicate that point. In regard to the rates to be assumed as the basis of calculation of the rent for which defendant is liable, the records of the case show that no pains were spared by the court of first instance to ascertain the fact by local inquiry, two officers being deputed at different times for that purpose. From the report of the last ameen deputed to the spot, it appears that the statement of cultivators, whose lands are contiguous, and of the witnesses cited by both plaintiff and defendant, are conflicting; some saying that the land of which defendant holds undisputed possession, is capable of yielding an annual aggregate rent of Sicca rupees 389-11-4, others Sicca rupees 214-1-2, and there is no reason to suppose that a third inquiry would secure results more proximate to the truth, as regards the rates, than those now before the court. For reasons before stated, I am disposed to regard the decree passed against Manick Coowur, and quoted by defendant as authority, as the safest and most equitable basis on which to calculate the rate for which defendant is liable. Since the decree against Manick Coowur does not appear from the records to have been *formally* put into execution, the 51 beegahs 4 cottahs shall not be exempted from the assessment I propose to allot, as was the case in the decision passed by this court on the 11th March 1848. The total land in the undisputed occupancy of defendant is beegahs 185-12-14-1; the jumma of which, as proved by plaintiff, is Sicca rupees 389-11-4, and by defendant 214-1-2, the difference between the two being 175-10-2. The equitable mode of adjusting would be to divide it, adding half, viz. 87-13-1, to the defendant's rate 214-1-2, making him liable for rupees 301-14-3 annually, which would give a rate *per* beegah, approximating as closely as possible to that which the defendant's predecessor, Manick Coowur, paid. In modification therefore of the former decision of this court of 11th March 1848, and that of the sudder ameen, the appeal is decreed to the extent above stated from the year 1252 B. S.; the respondent paying costs in proportion.

THE 9TH JANUARY 1849.

No. 16.

Appeal from a decision of the Sudder Ameen, Moulvee Mahomed Saem, dated 24th July 1847.

Parasnath Chowdhry and others, (Defendants,) Appellants,

versus

Juggut Mohinee Dassee, (Plaintiff,) Respondent.

THIS appeal was preferred from a decision passed by the lower court in case No. 15. The merits of the matter at issue have been fully entered on in the suit quoted, and the reasons for modifying the decision of the sudder ameen therein assigned, and they need not be entered on here.

The appeal is dismissed.

THE 11TH JANUARY 1849.

No. 98.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 16th February 1848.

Ram Mohun Manjee, (Plaintiff,) Appellant,

versus

Gungaram Naug Mudduk and others, (Defendants,) Respondents.

THE plaintiff sues to enforce the terms of a deed of agreement. He states that he is a sugar merchant, and that in the course of business the defendants purchased from him maunds 44-10 of coarse sugar between the 18th Kartick and 5th Aghun 1253 B. S. The defendants did not pay the full value of the sugar, and executed a deed of agreement on the 23rd Aghun 1253, binding themselves to pay the balance, a portion in Poos, and a portion in Maugh, in failure of which the present suit has been instituted. The defendants deny having had any transactions with plaintiff of the nature described by him, and plead that the present suit has been brought out of revenge, because the defendant, Sonatun, prosecuted him (plaintiff) before the deputy magistrate of Boodbood for assault, &c., &c. The moonsiff dismisses the case. The plaintiff fails altogether to prove that the defendants had any mercantile dealings with him, or to produce khattas, or accounts of any kind, exhibiting the transaction he represents to have occurred, upon which the agreement was executed. The deed itself is unworthy of credit; first, because it is not signed by the defendants, all of whom can write; and secondly, because the evidence of the attesting witnesses is not to be believed. The witness, Beloo, has undoubtedly perjured himself, and the moonsiff would have exercised a sound discretion in committing him. I see no reason to differ in opinion with the lower court, its decision is accordingly affirmed, and the appeal dismissed.

THE 11TH JANUARY 1849.

No. 99.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 14*th February* 1848.

Roop Churn Sein, (Plaintiff,) Appellant,

versus

Seeb Pershad Sein and others, (Defendants,) Respondents.

THIS is an action to recover possession of site of house, laid at 15 rupees.

The plaintiff states that the land in dispute is part of a lease that he holds on a mokurrerce tenure, that he sublet it to Bour Sein and others at an annual rental of 1 rupee, and that these parties dispossessed him.

The defendant, Ram Mohun Mangee, confirms plaintiff's statement. The defendant, Seeboo Sein, replies that he purchased 15 cottahs of land at a sale held in execution of a decree, and the plaintiff now seeks to dispossess him of 5 cottahs of his purchase.

The moonsiff dismisses the case.

His enquiry, however, appears defective, inasmuch as the plan furnished by the ameen and the deed of sale filed by Seeboo do not tally in regard to the boundary of the land in dispute. The appeal is accordingly decreed, and the case remanded to the moonsiff, who will reconcile the discrepancy now existing between the nuksha and the bynama, as respects the boundary, and then proceed to pass such orders as he may deem proper. The cost of stamp to be refunded in the usual manner.

THE 15TH JANUARY 1849.

No. 100.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 19*th February* 1848.

Khyroonnissa Beebee, (third party,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs and Defendants,) Respondents.

THIS is an action for balance of rent, amounting, with interest, to rupees 63-6.

The plaintiffs state that the defendants' lease is recorded in the name of one Minajoodeen, jumma Sicca rupees 29 annually, that the defendants are defaulters for the years 1250, 1251, 1252, and 1253, amounting in aggregate to the sum sued for. The defendant Sheik Bursoo confirms plaintiffs' statement of their holding a lease in the name of Minajoodeen. He maintains, however, that he holds

only a 4 annas interest, the defendant Innutoolla having 6 annas, and the widow of the defendant Bhadoo the other 6 annas; that each party is separately liable, and that he has paid his rents and holds receipts in proof of it. The defendant Bhadoo replies that his interest in the lease he made over to his wife in lieu of dower in the year 1253.

The defendant Innutoolla makes no reply, but his wife Dowlutoonnissa appears as a third party and claims possession in right of dower. Khyroonnissa, as a third party, likewise claims possession on the same plea.

The moonsiff decrees for plaintiff.

The point for adjudication is, whether the three defendants, Sheik Bursoo, Sheik Bhadoo, and Sheik Innutoolla, are defaulters, and to what extent? The plaintiffs produce accounts, certified by the gomashtas and witnesses, the former showing the defendants in balance to the extent claimed, and the latter proving their possession. The defendants, though they file receipts, are unable to certify them; and they cannot therefore be received as evidence. The possession of defendants being established, the claims of the third parties cannot be matter of inquiry, nor does it appear that the lower court has noticed them in a manner to prejudice them, as the appellant endeavours to shew. The appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 16TH JANUARY 1849.

No. 101.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 16th February 1848.

Kartick Pershad Sein, (third party) Appellant,

versus

Roop Churn Sein, (Plaintiff,) Respondent.

THIS is a suit for a balance of rent with interest.

Plaintiff states that defendant took a lease of some land in the year 1252, giving a kuboolceut to pay 13 rupees annually; in failure whereof, in the year 1253, the present suit has been instituted.

The defendant denies he is a tenant of plaintiff, and says that he holds his lease from the plaintiff's nephew, Kartick Pershad Sein. Kartick Pershad Sein, as a third party, states he is sole proprietor of the lease originally held by one Punchanund Adee, from whom he purchased it, in proof of which he files a kuballah executed in his favor.

The moonsiff records his opinion that, although the kuballah is drawn up in the name of Kartick Pershad Sein, the purchase was

evidently a joint one with Roop Churn, uncle of Kartick, and accordingly decrees for plaintiff.

There is no evidence that the purchase was a joint one, save that of plaintiff's witnesses, which is opposed to the terms of the deed of sale in which Kartick Pershad's name alone appears. The point at issue is the right of possession, which cannot be adjudicated in a suit for rent; until that is decided, the court is not competent to determine that Roop Churn's claim to rent is valid.

The plaintiff should have been nonsuited. The appeal is accordingly decreed, and the case remanded to the moonsiff, with a view to his pursuing the course pointed out. The cost of stamp to be refunded in the usual manner.

THE 16TH JANUARY 1849.

No. 102.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 16th February 1848.

Sheik Jungoo, (Defendant,) Appellant,

versus

Roop Churn Sein, (Plaintiff,) Respondent.

THE features of this case are exactly similar to those stated in case No. 101.

The appellant cannot be rendered liable for rent until the question of right of possession has been decided. For these and other reasons, stated in the case quoted, the appeal is decreed, and the suit remanded to the moonsiff with a view to his proceeding as therein directed. The cost of stamp incurred in preferring this appeal, to be refunded in the usual manner.

ZILLAH WEST BURDWAN.

PRESENT: C. GARSTIN, ESQ., JUDGE.

THE 10TH JANUARY 1849.

Case No. 10 of 1847.

Appeal from a decision passed by the Principal Sudder Ameen of West Burdwan, Baboo Chunder Seekur Chowdry, March 24th 1847.

Ram Mohun Banerjea, (Plaintiff,) Appellant,

versus

Buttoo Koomaree, Government, and others, (Defendants,) Respondents.

Rupees 782-14. To obtain possession of certain lands with wasilat.

THIS suit is brought by the plaintiff as talookdar of the Senaputtee mehal, to recover possession of 34 biggahs, 2 cottahs, and 14 chittacks of land belonging to his talook, which have been wrongfully resumed (under the name of Akria Dhovriapara) and settled by the Government (defendant) as najaiz (invalid) lakhiraj, belonging to Brij Mohun Singh; that a portion of these lands belong to him under a decree (No. 6509) obtained by a former talookdar, and that, when the resumption suit was going on, he put in a claim for them, which was rejected, but, on appeal to the special commissioner, that officer desired him to bring a suit for them in the civil court; that as the lands in dispute are really his, he now claims them, bringing the suit as above stated.

Buttoo Koomaree, defendant, replies that these lands do not belong to plaintiff's talook, and that he has no claim to them, that they are really those called Akria Dhovriapara and were hers, but that they have been resumed and re-let at so high a rate, she could not take them, and that the Government alone must answer for what has been done.

Government also reply that the lands called Akria Dhovriapara were resumed, and, after being duly measured, &c., were included in the jummabundee; that the usual ishtehars, &c. were issued, and, no one coming forward in opposition, they have been let in ijara, that

plaintiff's brother put in a claim for these very lands whilst under resumption, but that it was rejected, both in the first instance and again in appeal, and, now that they have been included in the bundobust, the civil courts cannot interfere, or pass further orders about them; that they had nothing to do with case 6,509, and know nothing of it; that the special commissioner gave no such order as stated, or that if he did it cannot benefit the plaintiff, and that they have precedents to show that the civil courts can do nothing in the present matter, &c.

On the 24th March 1847, the principal sudder ameen decides the case. He enters at length into its merits, and remarks that plaintiff lays great stress upon the order of the special commissioner, but that in reality it proves nothing for him; that plaintiff is talookdar only of the resumed chakeran lands, and, as such, has no claim to those in dispute, and besides gives no satisfactory account of them; that the Government vakeel puts in an order of the Sudder Dewanny Adawlut, dated the 18th June 1845, No. 128, (and which order was passed in a case pending in his own court,) which is quite conclusive as to the fact of his having no power to do any thing in the present case, and he therefore dismisses it.

The plaintiff appeals, repeating his claim to the lands, and adding that the above orders of the Sudder Dewanny Adawlut do not apply in this case; that when he appealed to the special commissioner, that officer remarked that this was a dispute about boundaries and directed him to bring a suit in the civil court; and that in a case of this kind the principal sudder ameen should have sent an ameen to go to the place and ascertain the facts by local investigation; that even if he had put in no claim for the lands before, the civil courts are bound to attend to it, and how much more is this the case when he brings the suit by order of the special commissioner, &c.

I have gone carefully through the proceedings held in this case, and am of opinion that the principal sudder ameen's orders are correct and must be upheld. The plaintiff puts forward the special commissioner's orders as the chief cause of his instituting the suit; but after all they simply say "that the plaintiff may, if he thinks proper, and that he has a good case, bring a suit in the civil court;" (this by the way he could have done if he liked, without any such permission,) but this is no proof of his right. It is clear that these lands have been resumed and settled by the revenue authorities, and it has been held by the Sudder Dewanny Adawlut (see the case of Bhowanee Shunker, of the 18th June 1845, and more particularly that of Hur Govind Ghose, of the 17th July 1847,) that the civil courts have no power to interfere in a case of this kind. Under these circumstances, I see no cause whatever to interfere with the orders already passed, and have therefore confirmed them, rejecting the appeal (without calling on the respondents to come forward,) and holding the plaintiff (appellant) liable for costs of the appeal.

THE 16TH JANUARY 1849.

Case No. 14 of 1847.

Appeal from a decision passed by the Principal Sudder Ameen of West Burdwan, Baboo Chunder Seekur Chowdry, June 18th, 1847.

Sreemunt Dutt, (Plaintiff,) Appellant,

versus

Manickram, Lokenath Persaud, and others, (Defendants,) Respondents.

Rupees 973-8-16. To obtain possession of a putnee tenure with wasilat.

THE plaintiff states in this case that he is the auction purchaser of a certain putnee tenure, (paying a jumma of 310-8-0,) which belonged to the defendant, Manickram, and which was sold in execution of a decree held against him on the 13th April 1844; that he paid 670 rupees for it, and was in a manner put in possession, &c., (some of the tenants recognizing his right,) when the defendants set up a false plea of having a durputnee holding, and have thus ousted him of his rights.

Lokenath Persaud and Khetturnath, defendants, reply and state that they, with a third party, (Nobin Mohun,) held the durputnee and got it from Manickram, the putneedar, in Maugh 1246, giving him 200 rupees in cash, and a yearly jumma of 321 rupees; that in 1248 the putneedar, Manickram, although he had got all the rent from them, fell in balance, and the tenure, under Regulation VIII. of 1819, was advertised for sale, whereupon they, to save their durputnee, on the day of sale, 2nd Jeit 1249 (May 1842), paid up all that was due by him, and were kept in possession, &c.; that the plaintiff has purchased only the putneedar's rights whatever they may be, and can in no way disturb their durputnee, and that what he states of some of the ryuts recognizing his claim, is false; that although they put in their claims in the degreejaree case and it was rejected, this does not injure their claim as durputneedars, as only Manick's rights have been sold, and this does not invalidate their holding under him.

The plaintiff rejoins, adding that it is not likely that the durputnee should have been given at the very small profit stated by the defendant; that the putnee was pledged to a man, named Ramkishen, and held by him up to 1246; and that at the very time the durputnee is said to have been given, the property was under attachment in execution of Chundee Churn's decree; that Nobin Mohun also put forward a claim for the durputnee, which was proved false and thrown out; that their story of paying up the rent to Manick in 1248, is untrue; and if the latter has conspired with the other defendants, this cannot in truth injure his claim.

The defendants answer again much as before, and say that their partner Nobin's claim has nothing to do with the present case as

they will settle with him, and that the sole point for enquiry is, whether they had or had not possession as durputneedars, when the plaintiff made the purchase under which he claims, &c.

On the 18th June 1847, the principal sudder ameen, after completing his enquiries, upholds the defendants' claim to the durputnee. He remarks that the plaintiff is only entitled to Manick's rights, whatever they may have been at the time of the sale, and that the defendants have satisfactorily shewn that they have held the durputnee for a long time previous to it; that what plaintiff says of Manick's holding the entire tenure up to the sale is not proved, whilst the other party clearly shews that, when the putnee was put up to sale in Jeit 1249, they paid up the balance due, and got orders to retain possession; and they also put in a durkhast of Manick's (of Poos 1248) in which he fully admits giving the durputnee; that plaintiff has, in fact, failed in shewing that the durputnee is false, and as he is only entitled to come in as putneedar in Manick's place, he therefore decrees the case for him to this extent (at the same time upholding the durputnee,) giving him costs, &c., in proportion.

The plaintiff appeals, stating that Manick himself held the entire putnee up to the sale, and that the defendants are now trying to deprive him of it: that the profits are large, and it is quite unlikely that the durputnee should have been given on the terms stated; that, in truth, the talook was under attachment at the time the durputnee is said to have been given; and that the principal sudder ameen should and could have ascertained this point; that he has fully shewn that Manick himself had possession of the whole putnee, and that defendants' (respondents') papers are false and unregistered; that Rooknee (granddaughter of Manick) claimed the whole durputnee as her husband's (Nobin's) and said nothing whatever of the present defendants, which has not been tested by the principal sudder ameen; that in short he has fully shewn that Manick himself had possession, and that the defendants' papers and statements are equally false, &c.

The chief point for consideration in this case appears to be the validity of the durputnee tenure claimed by the defendants (respondents), for, if it is good, the plaintiff (appellant) clearly cannot set it aside, as he purchased only Manick's rights whatever they may have been at the time of the sale. To prove his case, plaintiff (appellant) sets forth: first, that the talook was under attachment when the lease (durputnee) was given to the defendants; he also states that Manick (in Cheit 1247) brought a suit against ryut Puran for rent, which he could not have done had he not been in possession; and he puts in a durkhast of Musst. Rooknee's (a granddaughter of Manick's) on the part of her husband Nobin (absent on a pilgrimage) claiming the durputnee as his on the terms, &c. now stated, but making no mention of any partners in it, and he further puts in a

durkhast of Manick's (of 27th Phalgoon 1247,) calling himself the putneedar; but, after mature consideration, I cannot say that I think he proves his case. The principal sudder ameen sets all these aside, and, though there are certainly some suspicious circumstances, as regards the partnership in the durputnee, it is strange that Nobin (or rather his wife for him) should first claim it as his, and now not come forward at all: still this cannot, I think, nullify the strong evidence on the other side, and on the whole I concur with the principal sudder ameen in thinking that the plaintiff (appellant) has failed in shewing that the durputnee did not really exist.

I have myself made some further enquiry as to the fact of the talook being under attachment when the durputnee lease was given, and find that the plaintiff (appellant) is mistaken in stating that this was the case. The lease is dated in Maugh 1245, (January 1839,) and the attachment did not issue till Cheit, (April) following, and though it is possible that it was done in order to evade execution, I do not see that it can now be set aside. It is clear that the defendants (respondents) paid up the balances due by the putneedars in Jeit 1249 (May 1842,) and thus saved it from sale. Now the plaintiff (appellant) did not purchase until Sawun 1251 (August 1844,) and I do not see how he can fairly come in and set aside the defendants' claim as durputneedars, (and they have ample proof of possession, &c.,) as he was bound to have ascertained the real state of the case before making the purchase. Under all the facts of the case, as I see no cause to disturb the principal sudder ameen's orders, I have confirmed them, rejecting the appeal, and holding plaintiff (appellant) liable for the costs, &c. of it.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH, ESQ., JUDGE.

THE 2ND JANUARY 1849.

No. 523.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated 20th September 1847.

Reazoodeen *alias* Zeinoodeen and Fukeer Nusseeroodeen, (Plaintiffs,) Appellants,

versus

Akbur Ally, (Defendant,) Respondent.

THE appellants state that they are in possession of some lakhiraj land, and have never cultivated any land in turuf Shah Sagur, notwithstanding which the respondent has illegally attached and sold their property for arrears of rent claimed by him.

The respondent denies that the land is rent-free, and states that it is situated in turuf Shah Sagur, and that the attachment was made by him on behalf of the collector of Chittagong for arrears due for a year prior to the date of his lease.

This the moonsiff considered proved, and, as the appellants failed to prove that the land is rent-free, he dismissed the claim.

The appellants urge that Akbur Ally attached the lands on his own behalf, and not on that of the Government, and that the moonsiff had omitted to take evidence to his plea that the land is rent-free.

There is a perwannah from the collector filed in the case directing Akbur Ally to realize the sum of rupees 19-0-9, from various parties mentioned therein, due for rent for a year prior to his own lease, and it is in evidence that agreeably to these instructions the attachment was made and the sale effected. For this particular purpose, therefore, Akbur Ally must be regarded as the agent of the collector; and to enable the justice of the demand made by him to be tried, it is necessary that the collector should be a party to the suit. This the appellants have omitted to do, and they are therefore liable to be nonsuited. I therefore reverse the moonsiff's decision, and nonsuit the appellants. The costs to be defrayed by them.

THE 2ND JANUARY 1849.

No. 539.

Appeal from the decision of Kheiroollah Shah, Moonsiff of Zorowargunge, dated 21st September 1847.

Lall Mahomed and others, Appellants,

versus

Budeeoodeen Booeah, Allae Buksh and others, Respondents.

THE respondents state that in Assar 1208 they rented 6 kanees of land from Kumer Ally and others, and sowed 3 kanees of it with rice and 3 kanees with kuleye, and that between the 25th Poos and 2nd Maugh, the appellants cut and carried away the kuleye, and they therefore bring this action for its value.

The appellants state that the land belongs to Hameedoollah, and that it was cultivated on his behalf by one Abdoollah, who cut the crop.

As it was proved that the appellants carried away the crop from land sown by the respondents, the moonsiff gave a decree for its value.

The appellants urge that the case is not proved; but after going through the evidence, I see no reason to doubt the propriety of the decision. The pottah for the land, dated 21st Assar 1208, given by Kumer Ally to the respondents, is filed; and it is proved that they sowed the land and that the appellants carried away the crop. The appellants caused the attendance of three witnesses to prove their defence, but of these one states Abdoollah cultivated and carried away the crop, a second that the respondents sowed the land, and the third, that one Ally Majee sowed it. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 2ND JANUARY 1849.

No. 577.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated 30th November 1847.

Musst. Shamlah Beebee, wife, and Musst. Nuzumoonnissa, daughter of Abool Hossein, Jemadar, deceased, (Plaintiffs,) Appellants,

versus

Dagoo *alias* Mahomed Daim and others, (Defendants,) Respondents.

THE appellants state that Golam Hossein, the brother of Abool Hossein, jemadar, sold to them in 1195, 4 droons, 10 kanees; 15 gundahs of rent-free land, called Kadajah Beebee, which they obtained possession of at his death; that Golam Hossein and others ousted Abdoollah, the son of Abool Hossein, out of part of

the land, and that he sued them and obtained a decree; that they lived on the same premises with Abdoollah, which are composed of 1 kanee, 9 gundahs, 1 cowree of land, and that the respondents rented from Abdoollah, 5 gundahs, and paid him rent till he became insane, when they (the appellants) received it on his behalf; that the respondents have for some time refused to pay rent, and have, in the present measurement papers, recorded the land in their own name; and they therefore bring this action to correct the measurement papers, and obtain possession of the land, together with arrears of rent.

The respondents claim the property as ancestral, and state they have been in possession ever since the year 1181, and have never, during that time, paid rent for it to any one.

The deed of sale and the kubooleeut alleged to have been given, were not filed, but a decree of court, dated 30th May 1816, in which the deed of sale is mentioned as having been filed and proved, was; but the moonsiff, not considering it sufficient, dismissed the case. This appeal therefore was admitted to ascertain if the moonsiff's decision was repugnant to the decree filed, and also to ascertain if the appellants had proved their case.

The decree filed is the one alluded to in the appellants' plaint in which Sheikh Abdoollah, son of Abool Hossein, was plaintiff, and Mahomed Ally, son of Golam Hossein, defendant, and is dated the 30th May 1816. The suit was for 5 kanees of land, and a decree was given for that amount. This suit is for 5 gundahs, so that without a local investigation it is impossible to say whether it is included in the decree or not. This fact is, however, immaterial, for the appellants' witnesses have stated that the land claimed has been for more than twenty years in the respondents' possession, and the appellants have failed to prove that during this time they have ever received one pice of rent. Their suit, therefore, is barred by the statute of limitation. I therefore dismiss the appeal, and confirm the moonsiff's decision.

THE 3RD JANUARY 1849.

No. 216.

Appeal from the decision of Mr. Finney, Moonsiff of Second Town Division, dated 8th April 1848.

Huree Dass, fisherman, (Defendant,) Appellant,

versus

Musst. Loleetah, (Plaintiff,) Respondent.

THE respondent claimed 6 rupees, with interest, from the appellant, as having been lent to him in the year 1204. The appellant pleaded that the claim was false, and that the witnesses, named by the respondent to prove it, were at enmity with him.

The moonsiff says there is no evidence to shew that the money was borrowed by appellant and received by him; but that it is proved, that he agreed to pay the money when demanded from him, and that the appellant has not proved his objections, and he therefore gave a decree in favor of the respondent.

The appellant urges that he was never called upon to prove his objections, though he agreed to pay if one of the respondent's witnesses, named Tereiram, should say the money was due, but that the evidence of this witness was not taken. Both these objections are correctly made. I can find no order in the case calling upon the appellant to prove his defence, nor was the evidence of Tereiram taken. I therefore reverse the moonsiff's decision, and return the case to him that he may take evidence on the part of appellant. The appellant is entitled to the value of his stamp.

THE 3RD JANUARY 1849.

No. 217.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated 6th April 1848.

Kisno Chunder Doss, Sircar, (Plaintiff,) Appellant,

versus

Ramu Cardozo, Portuguese, Mudun Boroah, Mugh cook, and Hossein Ally, mally, (Defendants,) Respondents.

THE appellant states that he lent the three respondents the sum of 24 rupees, and took from them a bond, dated the 28th Aghun 1208.

Ramu Cardozo denies that he has ever seen the appellant. Mudun Boroah pleads absence from the town of Chittagong on the alleged date of the occurrence, and Hossein Ally says he can write and yet some one has written his name for him.

Four witnesses have sworn to the transaction, but the moonsiff discredited their testimony, observing, 1st. That the respondents were all of different castes and their houses situated in different places, and that although it was alleged they were servants of one master, yet still no reason was assigned for their joining in one transaction.

2nd. That the witness Ramonee, who wrote the bond in the names of the respondents, is the brother of the appellant, and has been present in court attending to the suit, and that he was witness to the serving of the process upon the respondents, and also to the vakalutnamah, and is clearly interested in the claim.

3rd. That Ramkishore witness, a relation of the appellant, attested the vakalutnamah before his court, and yet denies, on oath, that he ever did so, and therefore his evidence is unworthy of credit.

4th. That Gore Hurree, the brother of the appellant, went and caused the attendance of the witnesses, and

Lastly, that with the exception of Ramonee, none of the witnesses have ever, before or since the transaction, seen the respondents, and he therefore dismissed the claim.

The appellant urges that his demand has been proved; but after going through the papers of the case,—for the reasons urged by the moonsiff, I am of opinion that the evidence of the witnesses is unworthy of credit, and I therefore confirm the moonsiff's decision, and dismiss the appeal with costs.

THE 3RD JANUARY 1849.

No. 219.

Appeal from the decision of Mr. Finney, Moonsiff of Second Town Division, dated 17th April 1848.

Joomun Mistree, (Defendant,) Appellant,

versus

Kaloo Mistree, (Plaintiff,) Respondent.

THE respondent states that he took a contract from the appellant and Anish Mistree, to build a room for them, for which he was to receive 47 rupees; that he completed the work, but has been only paid 19 rupees; that in addition to the room he built a verandah to the house, for which he was paid 10 rupees, and he therefore brings this action to recover the balance of 28 rupees.

The appellant denies having made any contract with the respondent, but says he made one with his brother Shumsheer who employed the respondent: that Shumsheer undertook to build the house and verandah for 47 rupees, and that he has paid the amount and obtained his receipt for the money.

The moonsiff, in his decision, observes, "that Joomun has been unable to prove his objections by witnesses and receipts, nor has the plaintiff been able to prove that he worked separately for the verandah, for which he acknowledges to have received 10 rupees in addition to the 19 rupees," and he therefore decreed 18 rupees and costs of suit against Joomun and Anish.

Joomun alone appeals, and states that he filed his receipts, but that the moonsiff would take no steps to procure the attendance of his witnesses. This assertion is a mistake, for all the witnesses named by him were examined in the moonsiff's court, with the exception of two, whom the appellant was unable to point out.

By their depositions the witnesses have failed to prove the receipts, for they only state they have heard the money was paid, and that at the request of Joomun they signed the receipts. They are unable to say that the contract was made with Shumsheer, but assert that the work was done by the respondent. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 8TH JANUARY 1849.

No. 26.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 4th January 1848.

Jugmohun Canongoe, (Defendant,) Appellant,

versus

Moorleedhur, (Plaintiff,) Respondent.

THE respondent states that, on the 21st Falgoon 1197, the appellant borrowed from him 20 rupees, and pledged to him 15 gundahs of land, and that, before the money was paid, he, in the year 1204, forcibly dispossessed him; he therefore brings this action to recover from the appellant the principal together with interest.

The appellant admits the debt and the mortgage, but urges that he only received 10 rupees, and that he liquidated the debt and received back the land from the respondent.

The moonsiff, in his decision, says it is proved that the land was mortgaged for 20 rupees, and that the appellant took forcible re-possession of it in 1204, and that he has failed to prove his plea, and he therefore decreed the principal with interest from the date of dispossession. In appeal, the appellant urges that agreeably to Construction No. 898, the respondent ought to be nonsuited, as he has sued for the debt and not for the land. This is, unfortunately for the respondent, correct, for the Construction quoted by him is conclusive on the point, and was overlooked by the moonsiff. I therefore reverse his decision, and nonsuit the respondent. The costs of suit to be defrayed by the respondent.

THE 8TH JANUARY 1849.

No. 150.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated the 10th March 1848.

Shumsheer Ally, (Defendant,) Appellant,

versus

Rumzanee, (Plaintiff,) Respondent.

THE respondent stated that in Sawun 1208, he lent the appellant 16 rupees, taking from him a "nikas," and that he was to repay him in two months; that the "nikas" was destroyed by fire, and as the appellant has only paid him 1 rupee, he sues to recover the balance.

The appellant denied the transaction *in toto*, but the moonsiff, considering the claim proved, gave a decree for the amount.

The appellant urges that the transaction is not proved, there being discrepancies in the evidence of the witnesses. The respondent was duly served with notice, but has failed to defend the appeal.

Three witnesses deposed to the transaction before the moonsiff. One, Nizamut Ally, says he was asked at 7 o'clock in the day to write a nikas for 16 rupees, and that two others were present, and the appellant admitted he had received the money. Tunoo, witness, states that the transaction took place about one o'clock in the day. The witness, Nunoo Ghazee, says he does not recollect the date of the transaction, but that it occurred about a year ago, and that the appellant had paid 10 rupees of it, and that the respondent and his wife have quarrelled about the matter. The whole circumstance is suspicious; and as the payment of the money to the appellant by the respondent is not proved by the witnesses, I discredit it altogether, and reverse the moonsiff's decision, and dismiss the suit with costs.

THE 8TH JANUARY 1849.

No. 184.

Appeal from the decision of Moulvee Kheiroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 22nd March 1848.

Nagur Chand Tundal, (Defendant,) Appellant,

versus

Chamaroo and others, (Plaintiffs,) Respondents.

THIS was a suit brought by appellant to obtain possession of 5 gundahs of arable land and 10 gundahs of tank purchased by him on the 5th Chyte 1207, together with mesne profits.

The respondent Chamaroo admitted possession of the land and tank, but states that he paid Asmut Ally, the seller of the land, 10 annas rent for the arable land for the year 1206, and offered the same sum to the appellant for the years 1207 and 1208, but that he declined receiving it, and that he pays the rent of the tank to the zumeendar. The rate, however, and the name of the zumeendar he omitted to mention.

The moonsiff decreed that Chamaroo should settle with the appellant for the land and tank, and pay the costs of the suit.

The appellant urges that the moonsiff has not decided the rates at which he should pay rent for the land and tank, nor given him any mesne profit for the period claimed, nor recorded any reason for his omission.

The moonsiff has done right in not deciding the rate at which the appellant shall receive rent in perpetuity, but he should have declared the amount he is entitled to for wasilat. It is proved that the arable land lets for 3 rupees per kanee, but there is no evidence to shew the rates at which tanks are let. I therefore amend the moonsiff's decision, and award appellant wasilat for 5 gundahs of land, at the rate of 3 rupees per kanee, which amounts to rupees 2-13, from the year 1207 to the present date, and interest thereon to the date of realization. The respondent must settle with the

appellant within two months at the local rates for the land and tank, and failing to do so must give them up. He will also be liable to mesne profits at the rate of 3 rupees per kanee from this date till he settles for the land or gives it up. Costs of suit, with interest thereon, to be defrayed by the respondent.

THE 9TH JANUARY 1849.

No. 220.

Appeal from the decision of Baboo Sath Cowree Deb, Moonsiff of Zorowargunge, dated 14*th April* 1848.

Zeenut Ally Talookdar, (Defendant,) Appellant,

versus

Alam Seree and Mohbut Ally, (Plaintiffs,) Respondents.

THE respondents pleaded that the appellant, who is their talookdar, forcibly compelled them to sign a deed of sale of 16 gundahs of land belonging to them, for which he gave them no consideration, and they therefore sue to set aside the deed.

The appellant replies that the land was voluntarily sold to him by the respondents on the 3rd Chyte 1208, and that he paid them for it the sum of 16 rupees, when they made over to him their title deeds.

The respondents produced some witnesses to prove duress, and the appellant filed the title deeds and gave in a list of seven witnesses, of whom one only was examined on his behalf. The moonsiff, considering duress proved, reversed the deed of sale; and the appellant now urges that only one of his witnesses was examined, and that he was never called upon to take steps for procuring the attendance of the remainder. This plea is correct, and I therefore reverse the moonsiff's decision, and return the case that the moonsiff may call upon the appellant to take the usual steps for procuring the attendance of his witnesses.

The appellant is entitled to the value of his stamp.

THE 9TH JANUARY 1849.

No. 221.

Appeal from the decision of Mr. Finney, Moonsiff of Second Town Division, dated 9*th April* 1848.

Zeid Mohamed, (Defendant,) Appellant,

versus

Meer Ally Mohajun, (Plaintiff,) Respondent.

THE respondent states that he had a contract from the salt agent to bring salt from Khyouk Phyoo, and, on the 17th Phalgoon 1208, hired a sloop, called the *Futtah Kureem*, of the appellant, and advanced him 25 rupees, and he was to start far Khyouk Phyoo for the salt on the 28th of the month; that there were penalties in the deed of

engagement to the following effect, that if the appellant failed to fulfil the contract he should forfeit the sum of rupees 300, and if the respondent detained the vessel at Khyouk Phyoo beyond 15 days he should forfeit the same amount of penalty to the appellant; that the appellant failed to send his vessel at all, and he therefore brings this action to recover the full penalty of the deed.

The appellant denied the transaction altogether, and pleaded that he went in his vessel, in the month of May 1208, to Naraingunge to bring lime, and did not return till the 28th Phalgoon, so that it was impossible for him to have hired out the vessel; that he has moreover a partner in the vessel, and that his name would have been entered had the deed really been written.

The moonsiff gave a decree for the amount of penalty claimed, as the deed was proved, and the appellant failed to prove the allegations contained in his defence, though repeatedly called upon to do so. In appeal the appellant urges; that the hiring the vessel is not proved, as the witnesses live in different places, and have contradicted themselves in many important particulars; that if the hiring had really taken place, the respondent's name would appear as the hirer in the vessel's papers; and that the respondent has not sued for the 25 rupees alleged by him to have been paid in advance, and that he could not prove his defence, as he left Chittagong after the institution of the suit.

Two witnesses have deposed to the execution of the kerayahnamah (or deed of hire,) and I can see no discrepancy whatever in their evidence. There were six other witnesses to the deed, but the respondent was unable to serve them with a subpœna, and their evidence was consequently not taken; the ship's papers were in the possession of the appellant, and if they were material to his defence he ought to have filed them; for his plea, that he could not prove his allegations because he had left the country, will not avail him, as his pleader was in attendance during the trial of the suit. It was not necessary that the respondent should have sued for the 25 rupees, advanced by him as hire, as he is suing for the penalty incurred by the appellant's neglect to fulfil his contract. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 10TH JANUARY 1849.

No. 224.

Appeal from the decision of Mr. W. Wright, Moonsiff of Sundeep, dated 20th April 1848.

Mahomed Hashim and Shumsheer, (Defendants,) Appellants,

versus

Mahomed Akber and Mahomed Torab, (Plaintiffs,) Respondents.

THE respondents state that, on the 19th Chyte 1224, Kala Beebee sold to their mother, Noor Beebee, 15 gundahs of land, belonging to

Zimah Razah Fukeer, and that she died leaving them in possession; that the appellants gave them a kubooleeut for 12 gundahs of the land in 1239, and paid the rent for it for the years 1240 and 1241 and 1242, but have refused to pay since; and they therefore bring this action to recover possession, together with mesne profits from the year 1243 to the present time.

The appellants answer that the estate consists of 3 kanees, 5 gundahs, of which their father, Abeer Mahomed, was owner of 1 kanee, 16 gundahs, 2 cowrees, and Mahomed Mundeer of the remainder, and they deny that they ever executed the kubooleeut. Mahomed Hashim specially pleads that he was at Bullooah from Maugh to Chyte in the year 1239, and that it was consequently impossible that he could have signed the kubooleeut in the month of Phalgoon.

Shamsooter appeared and claimed 2 gundahs of the land, included in the plaint, as his, and stated that he had purchased it from Mundeer, a former proprietor.

The moonsiff deputed an ameen to measure the land, and he reported that the amount is not 12 gundahs, but 11 gundahs, 1 cowree, 2 krants, 4 dunts, of which 7 cowrees 15 teels are in the possession of Shamsooter, and 4 gundahs, 1 cowree, 3 teels in the possession of Yaz Mahomed, the remainder being measured in the names of the appellants and respondents, and of which the respondents claim 5 gundahs, 1 cowree, 1 krant, 4 teels. After receiving this report, the moonsiff recorded his opinion that the respondents are proved to be entitled to 9 gundahs, 2 cowrees, 1 krant, 9 teels of the land claimed by them, of which 4 gundahs, 1 cowree, 5 teels are in their possession, and he therefore decreed possession of 5 gundahs, 1 cowree, 1 krant, 4 teels, with mesne profits from the years 1245 to 1254, both inclusive, and costs of suit in proportion.

The appellants urge, first, that it has not been shewn that Kala Beebee had any proprietary right in the land, and that, consequently, any sale by her to the respondents' mother is void; second, that the moonsiff took no evidence from Mahomed Hashim to prove that he was in Bullooah when the kubooleeut was executed; third, that they are ignorant of the contents of the documents proving part of the land claimed to belong to Yaz Mahomed; fourth, that the respondents ought to be nonsuited, as part of the land claimed is proved to be in the possession of Shamsooter; fifth, that the lands have been measured by the collector in their name, and yet no suit has been instituted to reverse the measurement papers; and lastly, that the ameen has given a report in favor of the respondents from corrupt motives.

The first plea was not urged by the appellants in the moonsiff's court, and cannot be entertained now. The second plea is incorrect. The moonsiff called upon the appellants to prove the *alibi* set up by them, but they omitted to produce any evidence. The documents referred to in the third plea are copies

of a plaint and answer thereto, in a suit in which Yaz Mahomed was plaintiff and Hashim defendant, and prove that the land deducted from the respondents' claim was admitted by the appellant to be in the possession of Yaz Mahomed. The respondents, as urged in the fourth plea, are not liable to nonsuit for having omitted to include Shamsooter among the defendants the land was privately sold by the appellants to him, and the respondents could not be aware of the fact. The moonsiff has deducted it from the claim as not proved. It was unnecessary that the respondents should sue for the reversal of the measurement papers before they made their claim. On production of the decree, the collector will doubtless correct them. With regard to the last plea, I can only observe that no particulars are urged to enable me to ascertain if it is correct. There is nothing on the face of the report to lead the court to suppose that the ameen has been partial or corrupt, and no objections to it were made previous to the decision of the suit. I therefore confirm the moonsiff's decision, and dismiss the appeal.

The respondents will be entitled to wasilat at the rate laid down in the moonsiff's proceeding, from the date thereof to the date of their obtaining possession, and also interest upon the amount of wasilat, and costs specified in the plaintiffs' decision till their realization.

THE 10TH JANUARY 1849.

No. 232.

Appeal from the decision of Baboo Sath Cowree Deb, Moonsiff of Zorowargunge, dated 13th April 1848.

Budenath Dass, (Plaintiff,) Appellant,

versus

Weizoodeen, (Defendant,) Respondent.

THE appellant stated that Meioodeen had a tuppa of 1 kanee, 16 gundahs of land in talook Antemokeem upon the annual rent of 7 rupees, 7 annas, 8 pie, 3 d., and that he sold his rights to him in the month of Chyte 1199, but that the respondent refuses to receive his rent, and he therefore brings this action to compel him.

The respondent pleaded that he purchased talook Antemokeem at public auction on the 8th Bysack 1201, and served notices upon the different ryuts to attend him and settle for their land, but no one came forward for 2 kanees, 5 gundahs of it, and he consequently let it out to Mahomed Azeem and Amzid Ally, and received rent from them for the years 1201 and 1202, when they gave up the land; that he, in the year 1203, let it to Meioodeen; but that he has never

paid him rent, and he has consequently brought a suit against him which is still pending.

The appellant filed several dakhilas, and the tuppa pottah granted to Meioodeen, but failed to prove that Meioodeen had ever sold the land to him, and the moonsiff consequently dismissed the suit.

The appellant urges that his right to hold the land at a fixed rent is proved, and that a decree of the moonsiff's court upon the subject is conclusive.

The appellant has filed several receipts for rent granted by Banoo talookdar to Meioodeen, antecedent to the date of the respondent's purchase, but has altogether failed to prove that he has purchased Meioodeen's rights. The moonsiff's decree, alluded to, proves nothing. It is dated the 28th April 1840, corresponding with the year 1202, or one year later than the respondent's purchase, and is for rent claimed by Budenath as tuppadar against Meioodeen as his under-tenant. Meioodeen did not defend the suit, and the respondent was not made a party to it. The respondent issued notices to the ryuts to come forward to settle, and neither Budenath nor Meioodeen did so, and I therefore confirm the moonsiff's decision, and dismiss the appeal with costs.

The 10th January 1849.

No. 222.

Appeal from the decision of Baboo Sath Cowree Deb, Moonsiff of Zorowargunge, dated 15th April 1848.

Budenath, (Defendant,) Appellant,

versus

Weizoodeen, (Plaintiff,) Respondent.

This was an action for the rent of 2 kanees 5 gundahs, the subject of the suit No. 232, from the year 1203 to 1207. The moonsiff, for the reasons given by him in that case, declared the respondent entitled to receive rent from Meioodeen, the ryut, and that the amount should be determined in the execution of the decree.

This is irregular and contrary to the precedent laid down by the Sudder Court in the case of Ramcoomar Chuckurbutty and others, *versus* Ram Buttacharj, in which it was decided: "that it is irregular to award mesne profits in general terms and without specification of period from which they are recoverable." I therefore reverse the moonsiff's decision, and return the case that he may amend his decree and specify the period for which the respondent is entitled to rent. The appellant is entitled to the value of his stamp.

THE 15TH JANUARY 1849.

No. 582.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 8th September 1848.

Rammohun Beid, (Plaintiff,) Appellant,

versus

Fokeer Chand Banissur and others, (Defendants,) Respondents.

THE appellant states that Ramjee sold him 3 dhoons, 6 kanees, 17 gundahs, 2 cowrees, or a 4 annas share of turuff Mookoond Ram and gave him possession, and that the respondents cultivate 1 kanee, 19 gundahs, 1 cowree of land; that they paid him rent in the year 1191, but have withheld it since 1197; and he therefore brings this action to obtain possession and rent for the year 1206.

Banissur answers that he does not cultivate any land belonging to the appellant, but that he cultivates 2 kanees, 12 gundahs, 2 cowrees of land in turuff Mookoond Ram, for which he has paid Bindrabun Nundee to the year 1204; that in that year Bindrabun Nundee gave a talookdaree pottah to Bindrabun Mojumdar, and that he has paid rent to him from that year to the present time.

Bindrabun Nundee's son states that he has had possession of the land for more than twelve years, and that the appellant has not stated what became of the rent from the years 1191 to 1197, nor assigned any reason for claiming rent simply for the year 1206.

In his decision the moonsiff states that he gathers from the answers of the defendants and the depositions of the witnesses that appellant purchased his share of the turuff in the month of Poos 1195, and that he has been unable to prove that he has ever received a farthing of rent, or in any other way held possession of the land; that the defendant has proved that he has always paid rent to Bindrabun Nundee; and that, consequently, the appellant's claim is barred by the statute of limitations as his suit was not instituted till the month of Chyte 1208; and that although the suit was in the year 1846 struck off the file on default, lapse of time is declared by Section 2, Act XXIX. of 1841 not to be prevented thereby, and he accordingly dismissed the suit.

The appellant urges that he was not allowed to file all his evidence, and that, as his suit was pending in 1846, his claim is not barred.

The appellant caused the attendance of two witnesses only in the moonsiff's court, who stated that they had heard that he had received rent from the respondent, but no other evidence has been adduced, and his vakeel distinctly declared, on being questioned by the moonsiff, that he had no other evidence to bring forward. Section 2, Act XXIX. of 1841 declares that dismissal of a suit under its pro-

visions shall not prevent lapse of time under the law of limitations being incurred, and in this case, taking the date of purchase as the ground of action, more than thirteen years have elapsed. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 15TH JANUARY 1849.

No. 583.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 8th September 1848.

Rammohun Beid, (Defendant,) Appellant,

versus

Koilas Chunder, (Plaintiff,) Respondent.

THE respondent states that his father purchased a 12 annas share of turruff Mookoond Ram in the year 1194, the appellant being the purchaser of a 4 annas share, and that 1 kanee, 19 gundahs, 1 cowree of land, cultivated by Banissur and others (the defendants in suit No. 582,) and 17 gundahs 2 cowrees cultivated by Ramdass and others, (the defendants in suit No. 584,) belong to him; and that the appellant, in collusion with the collector's ameen, has got the land recorded in his own name, in dags 1097, 1098, 1102, 1103, 3315, and 3316, and he therefore brings this action to have his name substituted for that of the appellant.

The appellant declared the land to belong to him, and urged that he had always received rent from the ryuts, but the moonsiff, for the reasons assigned by him in case No. 582, gave a decree in favor of the respondent. The appellant has brought no new evidence in this case in the moonsiff's court, and I therefore pass the same order as in case No. 582.

THE 15TH JANUARY 1849.

No. 584.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 8th September 1848.

Rammohun Beid, (Plaintiff,) Appellant,

versus

Ramdass and others, (Defendants,) Respondents.

THIS was an action to recover rent from the respondents for part of the land which formed the claim in suit No. 583.

The respondents pleaded that they had never paid rent to the appellant at all, but held the land on a lease from Bindrabun Nundee, and this they proved. The appellant did not offer any evidence in this case, and the moonsiff, therefore, for the reasons assigned by him in case No. 582, dismissed the claim. The same order is passed by me in this case as in case No. 582.

THE 16TH JANUARY 1849.

No. 586.

Appeal from the decision of Kazee Furahutoollah, Moonsiff of Bhojpoor, dated 18*th September* 1848.

Prankishen, (Plaintiff,) Appellant,

versus

Soodaram and another, (Defendants,) Respondents.

THE appellant states that, on the 14th Jeit 1199, he lent the respondent 39 rupees upon a bond, to be repaid by 13 maunds of cotton, but as this has not been done he brings the action for its value.

The respondent admits that he borrowed the money, but pleads that he supplied the cotton upon the 29th Poos 1207.

The moonsiff, in his decision, states that the appellant's vakeel questioned one witness as to the price of cotton at the date of the transaction, but failed to ask the same question to the second, and that, consequently, his claim is not proved, and that moreover he unnecessarily made the son of the respondent defendant, and he is therefore liable, under the provisions of Act XXIII. of 1840, Section 40, to damages, and he therefore dismissed the case, and awarded the son of the respondent 2 rupees damages and costs of suit.

In this case, as the respondent admits that he borrowed the money but pleads payment, the moonsiff should have ascertained the truth of the plea. If it was of importance to ask the witness the price of the cotton, the moonsiff should have done so himself, and not have dismissed the case. Act XXIII. of 1840 refers to the mode of serving notices in Calcutta, so it is probable the moonsiff intended to write Regulation XXIII. of 1814, Section 40. But if this be so, that Section gives him no power to award damages: it simply declares that the amount adjudged shall be specifically entered in the decree. I therefore reverse the moonsiff's decision, and return the case that he may take evidence on behalf of the respondent, and decide the case upon its merits.

The appellant is entitled to the value of his stamp.

THE 16TH JANUARY 1849.

No. 587.

Appeal from the decision of Kazee Furahutoollah, Moonsiff of Bhojpoor, dated 8th September 1848.

Ramsoonder, (Defendant,) Appellant,

versus

Mahomed Azeem, (Plaintiff,) Respondent.

THE respondent states that Alleo Khan was in possession of a talook named Ado Ghazee, at the fixed rent of 41 rupees, 6 annas; that he sold 1 dhroon of it to him, the respondent, at the fixed rent of 16 rupees, and 2 kanees to Jan Ally and others, upon 2 rupees; and retained the rest of the estate in his own possession at the fixed rent of 23 rupees, 4 annas; that his rights and interests in the talook were sold in execution of a decree of court, and purchased by him (the respondent) on the 22nd August 1844; but that Rammohun and others, on the pretext of its having been mortgaged to them, will not give him possession, and he therefore sues to obtain it.

Rammohun pleads that the lands were pledged to him by Alleo Khan in 1203, and have not been redeemed.

The appellant urges that Ado Ghazee is a shikmee talook in his zumeendaree, and that the jumma is 44 rupees, 7 annas, 9 pie, and that the alleged sales of part of it to the respondent and others are void, as they have never been sanctioned by him.

The moonsiff, in his decision, says that there is no evidence of the mortgage, but it has been admitted by the respondent's vakeel, and that it is proved that the respondent purchased the rights of Alleo Khan in 1 d. 15 k. 4 g. 2 c. 2 c. of the talook at the specified rate of 23 rupees, 4 annas, and he therefore decreed that the respondent should, on satisfying the mortgagee, be put in possession, and that he should pay to the zumeendar the rents paid by Alleo Khan.

Ramsoonder, the zumeendar, appeals on the ground that the moonsiff has not enquired into the validity of his objections to the amount of jumma; and that his rights are injured by the decree.

I am of opinion that, in this case, the rate at which the talook should be held cannot be investigated. The respondent brought his action to obtain possession of the land purchased by him as belonging to Alleo Khan, and that has been decreed to him with the understanding that he is to pay whatever rent Alleo Khan did. The question therefore is open, and to decide it, it would be necessary to enquire whether Alleo Khan sold any and what lands to the respondent and others, and whether he had any right to do so, without the concurrence of the zumeendar,—questions clearly distinct from the point at issue in this case. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 16TH JANUARY 1849.

No. 588.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated 12th September 1848.

Hossein Ally, (Defendant,) Appellant,

versus

Rahomutoollah, (Plaintiff,) Respondent.

THE respondent states that he is the proprietor of 10 beegahs of rent-free land, called Shah Nizam, of which, on the 5th Assin 1198, he rented out 1 kanee 10 gundahs to Akbur and Gomanee; that he mortgaged it in 1205 to Anees for three years, at the end of which time he again took possession and has held it to the present time, but that the appellant has now, in collusion with the ameen, caused his own name to be recorded as the proprietor; and he therefore brings this action to reverse the measurement papers, and obtain the record of his own name.

The appellant urges that Shah Nizam was the great-grandfather of himself and the respondent, and had two sons, of one of whom he is the grandson, and the respondent of the other, and that the lands were equally divided into two portions; that he (the appellant) used to hold his share, but verbally gave an ijarah of it to the respondent and left the country, and that the respondent, knowing his right to it, caused his (the appellant's) name to be recorded as proprietor.

The moonsiff states that it is proved by the evidence of the cultivators that they paid rent to the respondent till he mortgaged the land, and that since its release they again pay him, and that, although the appellant has produced witnesses, who depose to the ijarah, he cannot credit their evidence; because, first, it is incredible that a lease for eight years should have been given without any deed, and the appellant has omitted to state the year of the lease; second, that the lands were measured in 1245, after the expiration of the alleged lease, and yet for nearly ten years, the appellant took no steps for receiving possession of them, and he therefore gave a decree in favor of the respondent.

The appellant urges the same objections as he did before the moonsiff, but, for the reasons stated by that officer, I consider the testimony of his witnesses incredible, and also to be rebutted by the evidence adduced by the respondent. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 16TH JANUARY 1849.

No. 589.

Appeal from the decision of Moulvee Syed Khyroollah Shah Budukshanee, Moonsiff of Bhutteeary, dated 19th September 1848.

Mahomed Wasil Chowdree, (Plaintiff,) Appellant,

versus

Mahomed Mokeem, (Defendant,) Respondent.

THE appellant claimed 19 rupees, 8 annas rent, with interest thereon, from the respondent, on account of a talook in his possession.

The respondent admitted that the talook was in his possession, but pleaded that he had paid the rent claimed. He filed in the moonsiff's court some receipts granted to him by Rumzan Ally, the gomastah of the appellant, and the moonsiff therefore dismissed the claim, observing that the hand-writing of the gomastah upon the dakhilas corresponded with his hand-writing upon other papers.

The appellant urges that the receipts filed have not been proved to have been given by Rumzan Ally, and this is true. The moonsiff, however, did not call upon the respondent to prove them and his investigation therefore is incomplete. I return the case that the moonsiff may call upon the respondent to prove his receipts.

The appellant is entitled to the value of his stamp.

THE 19TH JANUARY 1849.

No. 11.

Appeal from the decision of Baboo Opinder Chunder Nyarutten Pundit, Second Principal Sudder Ameen, dated 18th September 1848.

Musst. Doolub Beebee and Shumshare Ally, Appellants,

versus

Musst. Beejan Beebee, Respondent.

THE respondent states that her father, Mahomed Deim, died in the month of Bysack 1207, possessed of a brig named the *Jeisorah*, valued, with her stores, at rupees 3,000, and a share of another brig, named the *Jeimallah*, and worth 1,400 rupees and various other property mentioned in her plaint, leaving herself and two wives, Musst. Doolub Beebee, the appellant, and Khutajah Beebee, and several children, his heirs; that they all lived together, and that Mahomed Kamil managed their affairs and traded with their joint funds, but that he died in Poos 1207, leaving his wife, Nukeenah Beebee, his sole

heir; that during his life time he sold the half share they had in the brig *Jeimallah*, and despatched the brig *Jeisorah* to Akyab and Madras, under charge of a serang, freighted with rice, which he disposed of to great advantage, realizing, by its sale, the sum of rupees 4,846, and that deducting therefrom the sum of rupees 600, on account of seamen's wages, port clearance charges, &c., &c., there remained a net profit of rupees 4,246; that the serang then purchased with part of this money 4,500 maunds of kurkutch salt on the Madras coast for rupees 1,125, which he conveyed to Chittagong and delivered to the salt agent, from whom the sum of rupees 2,514-1 is due on account thereof to the owners of the brig, the same being credited in the salt office in the name of Mahomed Kamil; that Shumshare Ally, upon the death of Mahomed Kamil, took the management of their affairs and collected many outstanding debts, but that, having quarrelled with her (the respondant,) he, by the advice of Doolub Beebee, turned her out of the house in the month of Assin 1207; that at this time the value of their common estate amounted to rupees 12,262-2-6 of personal property, and of 1 droon, 14 kanees, 10 gundahs of land, of which she, the respondent, is entitled to rupees 1,424-8-10-2-1-3 of the personal property and to 3 kanees, 8 gundahs, 2 cowrees, 1 krant 3 dunts, of the real, and she therefore brings this action against Shumshare Ally and Doolub Beebee to obtain it.

In defence of the claim the appellant, Doolub Beebee, pleaded that the respondent has greatly exaggerated the value of the estate, and that, on the death of Mahomed Deim, he desired her (the appellant) to pay to the respondent the sum of rupees 400 conditionally that she should waive all claim to the estate left by him, and that she did so, and received from the respondent a farkhuttee, or receipt in full; that moreover, before his death, her husband settled upon her all he possessed in the world, and bequeathed his family to her care.

The principal sudder ameen drew up a proceeding agreeably to the provisions of Regulation XXVI. of 1814, declaring the points for investigation, but he irregularly specified the evidence required. In his final roobukarree he declares that the farkhuttee produced by the appellant is not proved, and that there is no sufficient reason assigned for its execution; that he called upon the appellant to produce her alleged deed of settlement, but that she has failed to do so or to produce any other evidence to the fact; that it is proved that the value of the personal estate left by Mahomed Deim amounted to rupees 9,083-4-6, from which must be deducted rupees 200 for charges incurred in his burial, and that this done, there remains rupees 8,883-4-6, for division among his heirs: that of this, agreeably to the futwa of the law officer, the respondent is entitled to a 1 kanee, 15 gundahs, 3 cowrees, 1 k., 4 d., 4 r. share, or rupees 994-3-1-10-11, and Mahomed Kamil, deceased, to 3 kanees, 3 gundahs, 5 cowrees, 3 d., 23 r. share, or rupees 1,195-12-17-33, of

which, after deducting rupees 200 for his burial expenses, the respondent is entitled, as one of his heirs, to rupees 345-9-1-1-27, making a total of rupees 1,339-11-2-11-38, and this amount accordingly he decreed with interest and costs. It must be observed that he omitted to pass any order relative to the claim upon the real estate.

From this decision the appellant urges, first, that the farkhuttee executed by the respondent and rejected by the second principal sudder ameen, is proved; second, that the principal sudder ameen refused to accept evidence to her settlement; and third, that the ship *Jeisorah*, valued at 3,000 rupees, has been lost since the institution of the suit.

The evidence of the witnesses to the execution of the farkhuttee is not credible; they are of a low rank in life, and had never seen the respondent before the date of the alleged transaction, and they are unable to assign any reason for it. The farkhuttee, moreover, which is filed, has several erasures in it, but by whom done, or when, is not in evidence. The assertion of the appellant that she was not called upon to prove the settlement of the estate upon her is false. She was duly called upon and failed to produce any evidence whatever.

The third plea was not investigated by the second principal sudder ameen, and the appeal was therefore admitted in November last, and both parties were called upon to adduce such evidence as they might wish. The respondent filed an answer to the appeal, denying the sinking of the vessel and urging that the appellant had privately sold it. She made no objection to the omission of the second principal sudder ameen to award her any part of the land claimed by her, but simply prayed that his decision might be affirmed. The appellants produced three respectable witnesses, merchants in the town of Chittagong, who stated that they had heard the vessel was lost, and knew that the serang and crew had escaped and returned to town. The respondent produced the serang and a moonshee employed in the vessel and one other person, and they all three deposed to the vessel being lost, and denied that they had ever heard that the appellant had sold her. Under these circumstances the value of the vessel, or rupees 3,000, must be deducted from the personal estate of Mahomed Deim, which will leave the sum of rupees 5,883-4-6, to be divided among the heirs. I therefore amend the decree of the second principal sudder ameen, and award to the respondent the sum of rupees 658-9-1-10-11, out of Mahomed Deim's estate and rupees 219-14-12-24, out of the estate left by Mahomed Kamil, together with interest thereon from the date of complaint to the date of realization. The costs, incurred in the second principal sudder ameen's court, by the respondent, must be paid by the appellant, together with interest thereon, from the date of decision to the date of realization, from Shumshare Ally and Doolub Beebee.

The costs of appeal to be defrayed by each party respectively.

THE 19TH JANUARY 1849.

No. 12.

Appeal from the decision of Baboo Opinder Chunder Nyarutten Pundit, Second Principal Sudder Ameen, dated 18th September 1848.

Musst. Doolub Beebee and Shumshare Ally, Appellants,

versus

Musst. Khutajah Beebee, Respondent.

THE respondent, who is the wife of Mahomed Deim, brought this action to recover from the appellants her share of the property left by her husband. The particulars of the case are the same as those of case No. 11, and need not therefore be re-capitulated. I therefore amend the decision of the second principal sudder ameen, and award to the respondent the sum of rupees 367-11-3-7-3, together with interest thereon, from the date of complaint to the date of realization. The costs incurred by the respondent, in the court of the second principal sudder ameen, must be defrayed by the appellants, together with interest thereon, from the date of decision to the date of realization.

Each party to pay their own costs in appeal.

THE 20TH JANUARY 1849.

No. 10.

Appeal from the decision of Baboo Opinder Chunder Nyarutten Pundit, Second Principal Sudder Ameen, dated 5th September 1848.

Mahomed Kassim and Musst. Russa Beebee, Appellants,

versus

Mirium Beebee, Respondent.

THE respondent pleads that her father, Golam Nuvee, had a rent-free estate, which was resumed by the collector, and that after its resumption it was settled with her as a talook, and that 1 d., 10 k. of the land are in the possession of the appellants and others, who have paid her no rent since the year 1240; that in the year 1247, they attacked her house, and, under fear of bodily injury, compelled her to sign a deed of partition, acknowledging them to be joint proprietors of the estate with herself, and that she brought an action to set aside the deed and obtained a decree for that purpose in June 1843. The present action is brought to obtain the sum of rupees 1,265, being rent due to her from the years 1241 to 1251.

The appellant, Kassim, admits the land to be in the possession of himself and others, but pleads that they hold it by various pottahs as talooks and howalehs purchased by them, and that the fixed rent for the whole is rupees 26-13; that the lands were held khas by Government, to whom they paid the rents for the years 1241 1242, and 1243, and by whom they had been refunded to the respondent.

Musst. Russa Beebee denies that any part of the land claimed was in the possession of her late husband, Mahomed Hafiz, who, she asserts, had long separated himself from the other parties sued in this case.

The second principal sudder ameen in his proceeding, drawn up agreeably to Regulation XXVI. of 1814, observes that the appellant's claim to hold the lands in virtue of their deeds of sale has already been decided against them by the civil court, in the suit brought by the respondent to reverse the deed of partition, and that it is therefore alone necessary to ascertain the amount of land in their possession, and the rates at which they ought to pay rent for it, and he accordingly called for evidence upon those points only.

In his final decision he says, it is proved that 7 k., 12 g., 3 c., 11 k. of land are in the possession of Shumsheer, Dowlut, and Buktar, and 14 k., 6 g., 3 c., 3 c., 18 d. in that of Mahomed Kassim and Russa Beebee, for which rent ought to be paid, and that the arable land lets for 3 rupees, 12 annas per kanee, and the garden lands at 5 rupees; that the total quantity of the land in the possession of the defendants amounts to 1 d., 5 k., 18 g., 1 c., 1 c., 11 d., which, at the annual rent of rupees 86-6-8-2, gives a total of rent due for eleven years of rupees 950-5-5-2; that from this, however, the sum of 44 rupees must be deducted having been paid jointly to Government by Dowlut and Kassim, and this done, there remains the sum of rupees 906-9-5-2, due to the respondent; that of this Dowlut, Buktar, and Shumsheer should pay rupees 300-1-9-12, and Kassim and Russa Beebee rupees 606-7-7-10, being the proportion due for the lands in their possession, and this amount he decreed, with interest thereon to the date of realization, and costs proportionably to the amount decreed.

From this decision Mahomed Kassim and Musst. Russa Beebee have alone appealed, and they urge:

1st. That the decision of the judge, reversing the deed of partition, has not reversed the deeds of sale, by which they are entitled to hold the lands at a fixed rent as talooks and howalehs.

2nd. That they have paid the rents claimed for the years 1241, 1242, and 1243, to Government, from whom the respondent has received them, and that the amount ought to be deducted from the decree.

3rd. That the land was never in the possession of Mahomed Hafiz, the husband of Musst. Russa Beebee, the appellant.

4th. That the respondent has received the rents claimed for the years 1250 and 1251, and that the amount ought to be deducted from the decree.

5th. That the second principal sudder ameen has, in opposition to the report of the ameen, decreed rent for more arable land than there really is in their possession.

6th. That the lands have been assessed at too high a rate.

7th. That the whole of the costs of the suit ought not to have been awarded to the respondent, but in proportion only to the amount of her decree, and that the value of a supplementary pleading, filed by the respondent, ought to be paid by her.

The decision of the judge, dated the 28th June 1843, reversing the deed of partition, does not, it is true, reverse the talook and howaleh pottahs, but in that suit the appellants did not plead that they held the lands under such tenures; on the contrary, they pleaded that they had purchased a proprietary right in them. This plea was overruled, and the appellants cannot now bring forward a new plea, as it is estopped in Mahomedan law, on the ground of tenakuz, or repugnancy, agreeably to the precedent of the Sudder Court, in the case of Bhanoo Beebee *versus* Imam Buksh, and dated the 5th of August 1843. The second plea urged by the appellants is valid: they have not only filed receipts for the rents paid to Government, but, in the suit for the reversal of the butwarah, the respondent admitted that she had received the rents from the Government. The possession of the land by Mahomed Hafiz, the husband of the appellant, Russa Beebee, as well as of the appellant herself, is clearly established by evidence, so that the third objection is bad, as also is the fourth, for no attempt has been made to prove the payment of the rents for the years 1250 and 1251. The fifth and sixth objections are groundless. The quantity of land declared to be arable by the second principal sudder ameen is in accordance with the report of the ameen, and the rates of rent fixed by him are agreeable to the evidence of the witnesses and the ameen's report. The seventh plea is erroneous, as the second principal sudder ameen has decreed costs in proportion only to the amount decreed. The value of the supplementary pleading, however, ought not to be charged to the appellants, as it was rendered necessary by the omission of the respondent to enter the name of a defendant in the original plaint. I therefore amend the decision of the second principal sudder ameen, and, confirming that part of it which declares Dowlut, Buktar, and Shumsheer liable to rupees 300-1-9-12, with interest and costs, deduct from the amount decreed against Mahomed Kassim and Musst. Russa Beebee, the sum of rupees 19-1-8-3, being the amount of rent paid by them to Government for the years 1241-42-43, and one rupee the value of the supplementary plaint, which leaves the sum of rupees 434-15-1-10 to be defrayed by the appellants, together with interest thereon from the date of plaint to the date of realization. The costs of suit, less one rupee on account of the supplementary plaint, as decreed by the second principal sudder ameen, with interest thereon, will be defrayed by the appellant. The costs of appeal will be regulated according to the amount decreed.

THE 22ND JANUARY 1849.

Appeals from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated 26th August 1848.

No. 591.

Mahomed Hossein, (Plaintiff,) Appellant,

versus

Metunjee Shah, Sreemunt Shah, and others, (Defendants,) Respondents.

No. 575.

Sreemunt Shah, (Plaintiff,) Appellant,

versus

Mahomed Hossein, (Defendant,) Respondent.

THE plaintiff, Mahomed Hossein, says that he cultivates 2 k. 9 g. of land in turruff Doolubram, and pays rent for it to Budenath Shah, that in the year 1209 Metunjee, calling himself a sharer, demanded rent from him, and forcibly cut his rice and carried off his betelnuts, and he therefore brings this action for 10 rupees, the estimated value thereof, and possession of the land.

Sreemunt Shah, the brother of Metunjee, denies that he ever dispossessed the plaintiff, but says that a quarrel arose about the land between the plaintiff and Kala Magee, and that he went to settle it, and that Kalā Magee cut the crops.

As it was proved that Sreemunt Shah gave the orders for the cutting the rice and gathering the betelnuts, though the quantity taken could not be ascertained, the moonsiff decreed possession of the land to the plaintiff, and condemned Sreemunt Shah to pay the costs of the suit. From this decision both parties have appealed; the plaintiff, because the value of the crops carried off has not been awarded to him, and the defendant, because he has to pay the costs of suit.

After reading the evidence I see no reason to disturb the moonsiff's decision. The plaintiff's witnesses have stated that some rice and betelnuts were carried away by Sreemunt Shah, though they are unable to state the quantity. I therefore dismiss both appeals, and confirm the moonsiff's decision.

THE 27TH JANUARY 1849.

No. 580.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated 25th November 1847.

Ramsoonder, Appellant,

versus

Shamut Ally, Golam Hossein, and others, Respondents.

THE respondent, Shamut Ally, pleads that, on the 13th Maugh 1207, he advanced the sum of 60 rupees upon a soder putroh to Golam

Hossein and others, for a hundred jarool trees and a soringah boat, that the planks were duly delivered to him, and that when he went to fetch them away in the month of Assin 1208, he ascertained that Ramsoonder had taken them all.

Ramsoonder admits that he took the planks, but pleads that he bought them of Mahomed Kamil, Baker Ally, and others.

The moonsiff, in his decision, says the contract is proved, and as Ramsoonder has taken the planks he must be answerable as well as the other parties to the contract, and accordingly gives a decree against the contractors and Ramsoonder. From this decision Ramsoonder appeals.

In this case it is necessary to ascertain whether the contractors really delivered the wood to the respondent. If they did, they are clearly not responsible. If they did not, the respondent's claim cannot hold good against Ramsoonder.

There are three witnesses, who give evidence that they cut the wood on the part of the contractors and delivered it to the respondent, and that they were afterwards employed by the respondent to bring it from the hills, where he had left it, and that when they went to bring it, they saw Ramsoonder carrying it away.

These witnesses have not attempted to shew how they made over the wood to the respondent, nor that the respondent ever took possession of it, by appointing a watchman to look after it, or by marking it so as to shew his ownership, and their testimony is open to suspicion, for by making Ramsoonder a principal in the removal of the wood after delivery, they remove the *onus* from their shoulders. I do not therefore think that there is any credible evidence to shew that the wood was ever delivered to the respondent, and he cannot therefore include Ramsoonder in the plaint. I therefore amend the moonsiff's decision, and release Ramsoonder.

The respondent must pay his costs.

THE 27TH JANUARY 1849.

No. 581.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated 25th November 1847.

Ramsoonder, Appellant,

versus

Shamut Ally, Munoo and others, (Plaintiffs,) Respondents.

THIS transaction is precisely the same as No. 580, with the exception of the contractors' names being Munoo and Baker Ally. The same order is consequently passed.

THE 27TH JANUARY 1849.

No. 517.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpoor, dated 17th September 1847.

Assanoollah, (Plaintiff,) Appellant,

versus

Koolochunder and others, (Defendants,) Respondents.

THIS was a suit to reverse the sale of a talook sold for rent due to the zemindar. The appellant stated that he had long held a talook named Assanoollah, Sufer Ally, and had paid rent for it to the zemindar to the year 1201; that it then came under the management of Government, and that he paid into the collectorate the rent for 1202, and received a receipt for the amount; that nevertheless, Koolochunder, who has a farm of the estate, declared the rents were unpaid for 1202, and brought it to sale in 1203, and purchased it himself; that he paid rent to Koolochunder for the years 1203 and 1204, and yet he, declaring the rent for 1204 was due, had attached his goods, and to reverse the attachment he (the appellant) has brought a separate action.

The respondent admits that he purchased the estate at auction, when it was sold for rent due for 1202.

A third action was brought by the respondent to obtain possession of a part of the estate purchased by him, and all three suits were brought up together.

On the 18th March 1845, the moonsiff decided that the suit to reverse the sale was inadmissible, as it had not been brought within one month from the date of sale. He decreed possession of the land claimed by Koolochunder, and dismissed the suit brought by the appellant to reverse the attachment.

The appellant appealed against the decision dismissing his suit to reverse the sale, but did not separately appeal against the two other decisions. On appeal the judge reversed the moonsiff's decision as he was, under the Regulations, at liberty to bring his action within the period of twelve years, the sale not having taken place under Act XII. of 1841.

The moonsiff, in his decision, states that he is unable to reverse the sale, as in doing so he should interfere with the two decisions referred to above, from which no appeal was preferred, and he therefore dismissed the claim.

The appeal therefore was admitted in May last, to ascertain if a decision reversing the sale would oppose the decisions which had become final, and, if not, whether the sale is liable to be cancelled or not.

There can be no question, but that a reversal of the sale would interfere with the decision awarding possession of certain parts of

the talook to the respondent, though it would not necessarily set aside the decision dismissing the suit to reverse the attachment; but I am nevertheless of opinion that the question of reversing the sale may be tried upon its merits, because all three suits were brought on and decided at the time, and the two decisions, called final by the moonsiff, are based upon the decision of this case. The appellant has satisfactorily proved, by receipts filed by him, that there was no arrears of rent due from him for the year 1202, for which the sale was effected, and the sale therefore was illegal and liable to reversal under the provisions of Section 14, Regulation VIII. of 1819, and I accordingly reverse the moonsiff's decision, and set aside the sale of the estate, which was effected on the 6th August 1841.

The costs of the original suit and appeal to be defrayed by the respondent.

Present: A. SCONCE, Esq., Additional Judge.

The 10th January 1849.

No. 3 of 1847.

Appeal from the decision of Moulvee Ashruf Alli, Principal Sudder Ameen, dated 28th January 1847.

Chundee Churn Sirkar, (Plaintiff,) Appellant,

versus

Jattra Mohun and Trepoorah Soonderee, (Defendants,) Respondents.

This is a case of champerty. Plaintiff (appellant) sued the heirs of one Parbuttee Churn, to recover, under an agreement, dated 1st Assin 1244, the costs of a suit decreed in favor of Parbuttee Churn, as well as one-fourth of the sum decreed, on the plea that he had advanced funds to Parbuttee Churn to prosecute the suit, and that the latter, by the agreement just mentioned, bound himself to reimburse and remunerate the plaintiff in the mode claimed.

The principal sudder ameen tried the case upon its merits, and from that decree, dismissing the claim, Chundee Churn appeals, but the transaction upon which he founds his claim is entirely illegal: the ikrarnamah upon which he rests his case is *per se* invalid. The appeal cannot be heard, and is accordingly dismissed. The defendants appeared in neither court.

The 11th January 1849.

No. 2 of 1847.

Appeal from the decision of Moulvee Ashruf Alli, Principal Sudder Ameen, dated 28th January 1847.

Musst. Kishoree Thakoorain, (Defendant,) Appellant,

versus

Musst. Anund Mohee, (Plaintiff,) Respondent.

The plaintiff in this case, Musst. Anund Mohee, setting forth that her deceased husband, Kishto Chunder Rae, the husband of defendant, Gokool Chunder Rae, and Goluck Chunder Rae, being brothers, had the accounts of their zemindarees and other matters kept in common; and that her husband, Kishto Chunder Rae, had contributed, out of his own personal funds, between the years 1197 and 1202 Mughee, certain sums in behalf of the joint account, which the two other brothers had not repaid, sued to recover from Musst. Kishoree Thakoorain the sum of rupees 668-0-7, thus due for monies advanced either on her husband's account or (since his death in Maugh 1200) on her own. In the whole plaintiff shewed Musst. Kishoree's one-third share of the advance to be rupees 829-4-17, and, giving her credit for the sum of rupees 161-4-10, due to her husband Gokool

Chunder as zir-i-mahajunee, apparently on some trading account, draws a balance of rupees 668-0-7. Plaintiff rested her case upon a written acknowledgment said to have been signed by Musst. Kishoree in Kartick 1202; and the principal sudder ameen, believing this to have been granted by the defendant in acknowledgment of the debt, decreed the sum claimed.

Without pronouncing any judgment upon the genuineness of the acknowledgment now referred to, I am of opinion that the circumstance of its being written on plain, instead of stamped paper, subjects the plaintiff (respondent) to a nonsuit. This paper is to all intents and purposes an admission of a debt due. It professedly embodies certain entries made in the credit side of the joint accounts current of the three brothers for six years: and from these transferred entries making a total of rupees 2,487-14-11, it exhibits the third share of Musst. Kishoree to be rupees 829-4-17. Musst. Kishoree denies the signature imputed to her, and she denies wholly the correctness of the accounts upon which plaintiff's claim is based.

It is clear to me that the acknowledgment, or memorandum, filed by plaintiff comes within the deeds described in No. 1, Schedule A of Regulation X. of 1829. It is not an account book, but the recognition of the payment of certain advances and of the share due by the party whose name it bears. The separate accounts current of the years 1197 to 1202 may or may not be correct; they may or may not comprise all the joint transactions which occurred between the three brothers, but this acknowledgment, of 15th Kartick 1202, virtually supersedes these and contracts a definite obligation to which these separate accounts cannot be considered equivalent. Plaintiff, in declaring that the defendant issued this deed, necessarily infers that the accounts of which it forms some items have been closed and ratified. She would leave these accounts no longer open to dispute; and thus is it the more important that a document, intended to have so much force, should have been formally executed.

Corresponding with the balance shewn in the acknowledgment of 15th Kartick 1202, is a memorandum entered in the close of the account current (jumma khurch) for the same year, in which, by the exhibition of Musst. Kishoree's signature to the counter-credit allowed her, for rupees 161-4-10, her acceptance of this balance of the "mahajunee" account is intended to corroborate the assumed admission of the balance due by her in the common account. I conceive that the introduction of this "zir-i-mahajunee" item alone, (I refrain from further details,) without any explanation of the affairs to which it refers, shews that the acknowledgment of Kartick 1202 is a substantive document, conveying a substantive obligation: and, as I have already intimated, finding that this document does not bear the stamp which the law prescribes, I reverse the principal sudder ameen's decision and decree a nonsuit. All costs will be charged to the respondent.

THE 13TH JANUARY 1849.

No. 272 of 1846.

Appeal from the decree of the Moonsiff of Runguneeah, dated 13*th May* 1846.

Sreemunt Ram, (Defendant,) Appellant,

versus

Ramdyal, (Plaintiff,) and others, Respondents.

THIS suit turns on the preference to be given to the opposing claims set up by the plaintiff, Ramdyal, and the defendant (appellant,) Sreemunt, to the proprietary interest in a talook Rajbullub within the estate turuf Dabee Singh Hazaree; Ramdyal relying upon his purchase on the 27th Bhadoor 1205, and Sreemunt upon a prior purchase, which he avers was made in his favor on the 4th Chyte 1202.

The deed of sale filed by Sreemunt is professedly granted by Musst. Doorputtee, the natural heir of the original talookdar; while that presented by Ramdyal was granted by Kaleechurn, the husband of Doorputtee, who, it is averred, acquired the talook as a dan, on his marriage with the latter.

Kaleechurn and Doorputtee were made defendants to the suit, and both supported the sale relied upon by the plaintiff, Ramdyal: so far the moonsiff was justified in looking upon Ramdyal's kuballah as valid; but I think he entirely erred in rejecting the prior deed and the earlier title acquired by Sreemunt. The moonsiff considered it proved that Sreemunt acquired the talook as a mortgage, not by purchase, in 1202: and, in fact, it is the evidence which we have recorded regarding this matter, which must determine the issue of the suit. If the purchase by Sreemunt be valid, it might remain doubtful in what form the zemindars gave effect to the transaction of the seller and buyer: but obviously even the reluctance or refusal of the zemindars to recognize the new talookdar could not make that transaction other than what it is.

Sreemunt, the appellant, was the old jotedar, or cultivating occupant, of the talook. And not only so; it is expressly admitted by the plaintiff (respondent) Ramdyal's own witnesses that the talook was mortgaged to Sreemunt for ten years from 1196 Mughee. Sreemunt indeed states that this was a lease and not a mortgage, but the circumstance is unimportant.

Again, Doorputtee and Kaleechurn, while they maintain the sale in favor of Ramdyal, declare that the transfer made of their interest to Sreemunt in 1202, was a two years' mortgage and not a sale. But from the terms of the deed itself, verified as it is by the evidence of Doorputtee's own witnesses, it is unquestionable that the talook was absolutely sold. While they attest Sreemunt's kuballah, Doorputee's witnesses add that there was a talk of transferring some lakhiraj land to Sreemunt and of his restoring the kuballah of the

talook; but this reserve leaves the genuineness of the deed, and, I infer, of the transaction untouched.

Further, it appears incredible that Sreemunt, who, as stated by plaintiff's witnesses, had already taken a mortgage of the talook from the years 1196 to 1205, should have nothing more than a two years' mortgage in 1202.

Again, it is disputed whether the right to sell the talook rested with Doorputtee or with her husband Kaleechurn. It is shewn that when the village was measured, the talook was recorded in the name of Kaleechurn; but whatever may be the value of this fact, if we had at issue the possession of Kaleechurn or Doorputee on one side, and the possession of a second independent party on the other, it is of little significance as regards the actual title of the husband and wife, between whom there was no dispute. We have no documentary evidence of the dan, or alienation of the talook, in favor of Kaleechurn. It is inferrible both from plaintiff's witnesses and the deed itself that the mortgage (or farm) made to Sreemunt in 1196 was granted by Sursotee, the mother of Doorputtee; and lastly, Kaleechurn, in his answer to the plaint, admitted that what he calls the mortgage of 1202, was made not by himself but by Doorputtee.

In disposing of this case, then, I am not to say that plaintiff (the respondent) did not receive from Kaleechurn in 1205 a deed of sale for the talook Rajbullub, or that he did not really pay Kaleechurn the value thereof: but it is clear to me that the talook was already sold to Sreemunt. I therefore reverse the decree of the lower court and dismiss the suit. Doorputtee and Kaleechurn will pay their own costs; the other costs must be paid by plaintiff, the respondent Ramdyal.

THE 15TH JANUARY 1849.

No. 4 of 1847.

Appeal from the decision of Moulvee Ashruf Ali, Principal Sudder Ameen, dated 16th April 1847.

Koolochunder (Plaintiff,) Appellant,

versus

Mohun Lall Sookul, Hossein Ali, and others, (Defendants,) Respondents.

KOOLOCHUNDER, the appellant, instituted this suit to quash the sale of a talook Deya Kanoo, a subordinate tenure within the estate turuf Sumboo Ram Canoongoe, which had taken effect in execution of a decree held by Mohun Lall Sookul against his (the appellant's) two brothers, Dabee Churn and Bishonath *alias* Bissumber. In his plaint, Koolochunder made the irregularity of the sale to turn upon the whole talook (consisting as he said of d. 1. 6. 7.) being sold as

the property of his brother, while much the largest portion belonged to himself. He stated that originally his grandfather, Kanoo Ram, and his grand-uncle, Deya Ram, held the talook in equal shares; that he jointly with his brothers had inherited one-third of his grandfather's half; and that Dhoolee, daughter of Deya Ram, in the year 1198 Mughee, gave him her father's half share of the whole talook. Thus of the entire talook he claimed for himself kanees 14-18, while he allowed his brothers only kanees 7-9.

The principal sudder ameen dismissed the suit for two reasons. He found that there was no sufficient proof of the gift from Dhoolee, and second, he considered that a petition presented by Koolochunder on the 3rd January 1843, whereby he became surety for his brothers, justified the sale of plaintiff's property as well as the property of his brothers, in execution of the decree.

This second reason, assigned by the principal sudder ameen, might have been good, if the measures which it was intended to support were borne out by the facts of the case. Ostensibly, plaintiff's interest in talook Deya Kanoo was not sold at all. Only the interest of the two indebted brothers was disposed of. So far therefore the sale of the entire talook, as comprising the right of Dabee Churn and Bishonath only, could not be considered as the legal transfer of the rights of Koolochunder.

But, moreover, it is the object of the appellant to insist that it was the condition of his security bond, that his liability should not be exacted till the sale of his brothers' property was found insufficient to cover the sum due. This point then has to be considered in connection with the main plea of the plaint.

I think that the appeal must be dismissed, not because the appellant's interest was properly sold, but because he has failed substantially to prove that the conveyance by sale of the talook Deya Kanoo has illegally deprived him of any interest which he before possessed. Koolochunder has adduced no other evidence in support of his title to two-thirds of the talook than the evidence of two witnesses. The evidence of one of these witnesses is to the effect that Dhoolee was entitled to one-half of the talook, and that, one year before the sale, Dhoolee and the three brothers held the talook jointly; and of the second, that the three brothers held jointly one-half of the talook, and that he had heard from Dhoolee and appellant that Dhoolee had sold to the latter her share, but of the date of sale or price paid he knew nothing. The evidence of these two men is general and imperfect. One speaks of Dhoolee being in possession six years after the period at which according to the averment of the plaint her interest ceased: and in all other respects they have failed to specify any circumstances, which can be taken to shew that the witnesses possessed that actual knowledge of the existence of Koolochunder's rights, which only should be regarded as valid and sufficient testimony. So also appellant's claim wants the support of such docu-

mentary evidence as parties with his pretensions should possess, relating to the occupancy of land and the receipt and payment of rent.

Further, doubt is thrown on plaintiff's (appellant's) title from the varying claims preferred by him. In this suit he claims two-thirds of the talook. In the petition presented by him on the 3rd January 1843, he claimed only a third share of the whole: and let it be observed, that this petition was preferred in 1204 Mughee, while appellant now states he had acquired Dhoolee's half in 1198.

Again, it is to be noted that though the sale of talook Deya Kanoo occurred on 31st March 1845, upon the debtors of the decree-holder failing to liquidate the instalments which had been mutually agreed upon, the talook had been attached three years before for the entire debt, and that a claim brought forward on that occasion by Koolochunder to hold one-third was rejected both by the principal sudder ameen and judge, in consequence of the delay of the petitioner. It seems therefore that it was the more incumbent upon appellant to be prepared with specific evidence of his alleged rights, when he brought the question to a formal trial.

However much then I am disposed to admit that Mohun Lall Sookul, the holder of the decree against the appellant's brothers, was bound not to sell any rights of the appellant's when he did procure the sale of talook Deya Kanoo, the admission cannot affect this action, inasmuch as Koolochunder has failed to prove that the sale has deprived him of any rights which he was previously in the enjoyment of.

I add, in conclusion, that whatever weight is attachable to the mere representation of Koolochunder with respect to his own share in the talook, in tendering himself as a surety to the decree-holder, his brothers, the debtors, in a petition presented on the same date, declared the whole talook belonged to themselves.

Under these circumstances I dismiss the appeal. All costs of the suit will be charged to the appellant.

THE 17TH JANUARY 1849.

No. 23 of 1846.

Appeal from the decree of Moulvee Ashruf Ali, Principal Sudder Ameen, dated 27th August 1846.

Kashenath Chukerbuttee and Gouree Churn Dass, (Plaintiffs,) Appellants,

versus

Ahsunoozuman, Rumzan Ali, Malika Banoo, and others, (Defendants,) Respondents.

APPELLANTS in this case sued to recover possession of an estate, named talook Mahomed Nusseem, assessed at rupees 221-8-5, which they assert was sold to them by Ahsunoozuman, one of the

respondents, on the 12th Phalgoon 1204 Mughee, (that is 1843, A.D.) Ahsunoozuman, they aver, acquired the estate in 1201, upon the death of his brother Mehroozuman in the month of Bhadoon of that year; and the latter, they say, purchased the talook from Rumzan Ali by a deed of sale dated 13th Bysack 1196.

On the other hand, Malika Banoo, respondent, opposes to the claim of the appellants a transfer of the talook made as she declares by her husband, Rumzan Ali, in her favor, by a deed (kabinnamah) dated 9th Agrahun 1189.

In support of their suit, appellants mainly rely on a declaration made by Rumzan Ali, on the 12th May 1837, when examined in a case pending before the moonsiff of Nowaparah. Rumzan Ali then said that he had sold all his property to Mehroozuman in 1196. And no doubt the whole subject at issue turns upon the good or bad faith with which Rumzan Ali acted in this matter. He repudiates the alleged sale to Mehroozuman, and adheres to the transfer of the sale (in lieu of dower) to his wife Malika in 1189: and he pretends to qualify the statement made by him in the examination just noticed by avowing that he spoke only of one-fourth of another estate which, on transferring his other property to his wife, he had reserved for himself; and that his admission of the sale to Mehroozumah was a sheer fraud to silence any claims, which, on his death, his daughters might adduce.

Under circumstances such as these, a party who defies the principles upon which alone justice can be administered, can hardly expect the support of our courts in his favor. But, nevertheless, the merits of this action, as they are asserted or contested by the principals interested, must be distinctly considered. Obviously, if the alienation of the estate to Malika Banoo in 1189 were a *bonâ fide* transaction, the sale in favor of Mehroozuman in 1196 was superfluous and void. I have therefore mainly to consider whether talook Mahomed Nusseem, substantially sold to Mehroozuman, was actually transferred to him, and, on his death, descended to his brother, Ahsunoozuman.

Appellants (the plaintiffs) have filed the kuballah of 12th Phalgoon 1204, and have attested it by witnesses; they have also filed the kuballah of 15th Bysack 1196, professedly granted by Rumzan Ali to Mehroozuman, but of the genuineness of this kubullah, or of the transaction which it rehearses, they have given no evidence. They have also filed four decrees of the years 1837,1838, and 1841, in which allusion is made to the alienation of Rumzan Ali's property in favor of Mehroozuman, and in which Mehroozuman or Ahsunoozuman acted as zemindar. It so happens that none of these decrees apply to talook Mahomed Nusseem, now contested, but it is clear that, with whatever view promoted by Rumzan Ali, these suits give a colour or countenance to the alleged alienation. And finally, they have filed copies of certain measurement papers

which shew that the talook was measured in the occupancy of Mehroozuman.

Now what I find defective in the appellants' case is this, that they have given no substantial evidence of the transfer of talook Mahomed Nusseem to Mehroozuman, and that the evidence, which they have produced, more especially taken in connection with the evidence adduced on the part of Malika Banoo, is not inconsistent with the claims of the latter person.

For example, appellants point to the judicial examination of Rumzan Ali, in proof of his relinquishment of this property to Mehroozuman; but on the other side, there is filed a petition presented, on the 19th June 1839, by Mehroozuman to a deputy collector employed in settlement operations, in which he distinctly admitted that the talook Mahomed Nusseem was measured in his name, it was the property of Malika Banoo and was managed by Rumzan Ali. This petition was presented, let it be observed, more than three years before the purchase of these appellants.

But, above all, appellants have not proved the sale to Mehroozuman; and they have not proved that he or Ahsunoozuman occupied and enjoyed the profits of the estate. I need not designate the various sorts of proof of which such a circumstance is susceptible. I may mention only the receipts granted for the payment of Government revenue; and it is certainly remarkable that though appellants aver that Mehroozuman and Ahsunoozuman owned the talook Mahomed Nusseem for eight years before their own right originated, they have not offered a shred of evidence to shew that throughout that period Mehroozuman or Ahsunoozuman paid any portion of the Government revenue assessed upon the talook.

Malika Banoo has filed the kabinnamah granted to her in 1189, and has also brought forward several witnesses to prove the execution of this deed and her own actual possession of the estate in dispute: and though it is perfectly conceivable to me that her case might have been stronger than it is, I am perfectly satisfied that the appellants have come into court with grounds which are insufficient to shake her title.

Upon these grounds, I see no reason to disturb the decision of the principal sudder ameen, and the appeal is accordingly dismissed. Costs will be charged to appellants.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, ESQ., JUDGE.

THE 18TH JANUARY 1849.

No. 11 of 1847.

Appeal from the decision of Baboo Tarrakaunth Bidiasagur, Principal Sudder Ameen of Cuttack, dated 28th April 1847.

Sheebai Sahoo, (Plaintiff,) Appellant,

versus

Jugurnath Bullub Rai, Anund Mahee Dassee, widow of Soodursun Rai, deceased, and her ward and minor son, Dhunardhun Rai, Respondents.

THIS suit was instituted by the appellant on the 18th December 1845, to obtain possession of 5 mans, 7 ghoonts, 12 biswas of resumed lakhiraj land in mouzah Hubeeboollapore, and 2 mans, 6 ghoonts, 7 biswas of similar land in mouzah Maharpore, pergunnah Burrooah, together with the mangoe and cocoanut orchards respectively planted thereon, and mesne profits, with interest, to the date of realization. Claim laid at rupees 601-12, under a deed of mortgage executed by Jugurnath Bullub Rai and Soodursun Rai on the 12th Srabun 1248 U., corresponding with the 3rd August 1841 A. D., in consideration of a loan of rupees 350 obtained from the appellant, which was to be repaid in the course of one year.

Jugurnath Bullub Rai neglected in any way to defend the suit, and Anund Maheè Dassee, for herself and minor son, denies that her late husband, Soodursun Rai, ever borrowed the money, or executed the kuballah, and asserts that she was ignorant of the publication of the itlanamah and ishteharnamah, which were served on the defendants under Section 8, Reg. XVII. of 1806, prior to the foreclosure of the mortgage, and consequently was unable to file her objections, and she further states that her husband was employed at the time the kuballah is alleged to have been executed, under deputy collector Mokoond Pershad, at a distance from Poorsuttumpore, where the respondents reside and the deed was executed.

The appellant cited the writer of the kuballah, and four out of five of the subscribing witnesses to the deed, to establish its due execution, besides two other persons to the fact of his having ineffectually demanded payment of the money from Jugurnath Bullub Rai and Soodursun Rai; and whereas three of the said witnesses depose distinctly to the execution of the deed by both the brothers, Chintamony Singh, cousin to defendants, *first* stated that they both signed the deed in his presence, and that he was one of the attesting witnesses, though he afterwards prevaricated and asserted that the kuballah was drawn out previous to his arrival at the place where it was written, and that he only saw Jugurnath Bullub Rai and the appellant, who told him to attest it; and another witness, Judoo Mhaintee, the gomastah of the respondents, whose attendance was caused by the respondents, though he was not forthcoming when subpœnaed by the appellant, in like manner prevaricated, he having first stated that Jugurnath Bullub Rai and Soodersun Rai executed the kuballah, pledging the lands in dispute to the appellant, on account of a loan granted in Calcutta to respondents' brother, Brij Coomwar Rai, by appellant's agent, and afterwards stated that Soodursun Rai was not present when he attested the kuballah.

The principal sudder ameen, without making any reference to the testimony of Baidenath Bose, the writer of the kuballah, observes that, notwithstanding Ram Kanoo, Ootur Rai, and Funchanand Bose, have corroborated the plaintiff's statement, regarding the execution of the kuballah and the receipt of the money by Jugurnath Bullub Rai and Soodursun Rai, it does not appear from the evidence of Chintamony Singh that Soodursun Rai was present at the execution of the document, and that the statement of the latter witness is corroborated by that of Judoo Mhaintee, and on these grounds he dismissed the suit, and pronounced the kuballah to be a fabrication.

JUDGMENT.

The execution of the kuballah by Jugurnath Bullub Rai and Soodursun Rai having been clearly established by the evidence of three, and the delivery of the money by that of two of the appellant's witnesses; and the testimony of Chintamony Singh, the cousin, and Judoo Mhaintee, the gomastah of the respondents, being, as above exhibited, a tissue of prevarication and falsehood; moreover, it being highly improbable, if, as stated by the respondent Anund Mahee, the kuballah was a forgery, that the appellant would have selected the relations or dependents of the respondents as witnesses to the document, it is therefore ordered, that the decision of the principal sudder ameen be reversed, and that the land claimed, with mesne profits, (to be ascertained hereafter,) and costs, with interest to date of realization, be decreed against both respondents, and that copy of this decree be transmitted to the collector to insert the name of appellant in his registers in lieu of respondents as proprietors of the land.

THE 18TH JANUARY 1849.

No. 16 of 1847.

Appeal from the decision of Baboo Tarrakaunth Bidiasagur, Principal Sudder Ameen of Cuttack, dated 30*th August* 1847.

Gopbundoo Purumgooroo, (Defendant,) Appellant,

versus

Sussy Priya, widow of Puddum Lochun Gosal and mother and guardian of Shama Mohun Gosal, (Plaintiff,) Respondent.

CLAIM, rupees 434-1-10-7, principal and interest of a bond debt bearing date 23rd Asar 1250.

The suit was decreed *exparte*, the defendant having failed to enter appearance before the principal sudder ameen; and in appeal he urges illness as the cause of his neglect, and asserts that the usual ishteharnamah was not duly published; and although he adduced three witnesses, who deposed to his illness, and one of them, the chowkeedar of the village, stated that he did not grant the receipt for the ishtehar, such testimony cannot be implicitly relied on, for the peadah who served the ishtehar deposed on oath to its due publication, and filed the chowkeedar's receipt for it, attested by three witnesses, and though these witnesses were not examined as they ought to have been, the appellant admits the execution of the bond, and merely asserts that on different occasions he paid in cash and kind rupees 150, for which he holds separate receipts, and should he really possess such documents, they can avail him nothing, as, by the conditions of the bond, all payments, not duly endorsed on the back thereof, as well as all separate receipts adduced as proofs of payment, were to be rejected as invalid. I therefore affirm the decision of the principal sudder ameen, and dismiss the appeal with costs.

THE 23RD JANUARY 1849.

No. 82 of 1847.

Appeal from the decision of Benninauth Bose, former Moonsiff of Cuttack, dated 29*th July* 1847.

Nubeen Kishore Bundoopadia, (Plaintiff,) Appellant,

versus

Ram Kunai Chuttoorjea, (Defendant,) Respondent.

THE plaintiff sued to recover 48 rupees, paid by him on different occasions to defendant for the marriage of his eldest daughter, Musst. Kumla Dibbea, under a receipt, alleged to have been granted by defendant, bearing date the 18th Phalgoon 1252 U.

The defendant admitted that he promised his eldest daughter in marriage to plaintiff, and that he received 41 rupees, out of 125

rupees, stipulated to be paid by plaintiff in consideration thereof; but he likewise asserted that, in consequence of plaintiff's inability to pay the balance, he returned to him the sum of 41 rupees and received back the *poutee*, or receipt granted by him, together with the kurarnamah, or agreement, and married his daughter to another person; but he denied having granted the receipt for 48 rupees under which plaintiff sues, and filed a receipt for 41 rupees, representing it to be the document returned to him by plaintiff, though he neglected to adduce any proof in support of it.

The moonsiff, giving credit to the evidence of the plaintiff's witnesses, submitted the following question based thereon, for the opinion of the pundit of the 24-Pergunnahs:

Question.—In the event of its being proved by the plaintiff's witnesses that defendant engaged to give his eldest daughter in marriage to plaintiff, and that, on his being in need of money, he demanded from plaintiff the money stipulated as the conditions of the marriage, plaintiff was unable to pay it, and defendant in consequence married the daughter (engaged to plaintiff) to another person, and having conciliated plaintiff by the promise of his second daughter, defendant obtained from him the kurarnamah and receipt for 41 rupees, which he had executed on account of the marriage of his eldest daughter, and granted him another agreement and receipt for 48 rupees on account of his second daughter, and plaintiff subsequently objected to marry the second daugther, and demanded the refund of the 48 rupees; and defendant, being unable to pay it at the time, promised that he would do so after making arrangements for the marriage of his daughter with some other person, and his daughter subsequently died without having been married,—is the defendant by the Hindoo shastra bound to repay the money received from the plaintiff?

In reply to the above question the pundit declared that it was optional with the defendant to return the money or not, and the moonsiff accordingly dismissed the plaintiff's claim; and against this decision he appealed, asserting that even according to the *bywastah*, the defendant having promised to repay the money is bound to do so.

Setting aside the opinion of the pundit on the point referred to him, the question for decision is—Is the claim of the plaintiff, to the effect that he paid 48 rupees under promise of marriage to defendant's eldest daughter proved, neither the plaintiff nor defendant having made allusion to any arrangement regarding the marriage of the second daughter in their plaint or answer? And in my opinion it is not; for although the two witnesses cited by plaintiff to prove the genuineness of the receipt filed by him, assert that the defendant took back from the plaintiff the kurarputtro and receipt for 41 rupees, first granted to him, and gave him another receipt for 48 rupees, together with a kurarputtro for his second daughter,

neither of the said witnesses, though they were able to write, signed the receipt, nor did they state when the receipt was written, and one of them distinctly stated that he was unable to identify the receipt. It is moreover unlikely that the plaintiff would return the receipt for 41 rupees, without obtaining payment of the money, after the defendant had broke his promise to him, and married his eldest daughter to another person. I therefore, under the above circumstances, dismiss the appeal with costs.

THE 25TH JANUARY 1849.

No. 6 of 1848.

Appeal from the decision of Moulvee Mahomed Farookh, Moonsiff of Balasore, dated 7th December 1847.

Musst. Toolsee, (Plaintiff,) Appellant,

versus

Waris Mahomed, (Defendant,) Respondent.

CLAIM, possession of half a house and the land on which it is erected, together with the waste land appertaining thereto in the Mooteegunge bazar, pergunnah Sunhut, valued at rupees 99-14, and wasilat from the 14th October 1844 to 1st February 1847, amounting to rupees 22-15-2, total rupees 122-15-2.

Plaintiff states that Gobind Barik, defendant's husband, possessed two thatched houses, situated on the dewutter land belonging to Sree Lukmeenarain Thakoor, in the Mooteegunge bazar, on account of which he paid rupees 1-2 rent to Nath Das Sewait, the poojarry of the Thakoor, to which, on his death, Musst. Toolsee defendant, and her son, Sheeboo Barik, who subsequently died, succeeded, and that defendant let the houses, and afterwards sold half the land and the house thereon to Bissenath Sennaputty, and executed a kaballah, bearing date 14th October 1844, which was duly registered, on the 29th idem, in the office of the register of the district, but she neglected to cause the tenants to execute agreements in favor of the purchaser, who was unable to get possession, and he in consequence instituted a suit on account thereof before the moonsiff, which was afterwards struck off on default; and on the 1st January 1847, the purchaser resold the house and land to plaintiff, and transferred to him the kuballah, and notwithstanding Bissenath Sennaputty sued Kooshalee Barik and others, with Musst. Toolsee, supposing them to have nothing to do with the case, he has instituted the present suit against Musst. Toolsee alone.

Defendant replied that she neither sold the house and land, nor executed any kuballah in favor of Bissenath Sennaputty, and that, as plaintiff had omitted to sue Kooshalee Barik and Musst. Soro, widow of Sheeb Barik, deceased son of Toolsee, against whom,

conjointly with herself, Bissenath Barik had previously instituted proceedings before the moonsiff, and Kooshalee Barik, who possessed a right in the land, had on that occasion filed a jawab, setting forth that his son, Radha Mohun Barik, mozahim, appellant in case No. 8, was jagheerdar and pottahdar, the plaintiff's claim should be nonsuited. She further stated that the land in dispute formed part of the dewutter land of the Lukmeenarain Thakoor, and was held by her husband, Gobind Barik, conjointly with Kooshalee Barik, as jagheer, or service land, for sweeping and lighting the temple, and that, after the demise of her husband and son, in consequence of her inability to perform the required service, the sewait Nath Das Adheekarry sued her for rent under Regulation V. of 1812, and she relinquished the house together with the business of the temple; and that, only having held possession on condition of performing service connected with the temple, she had no power to sell the land; and moreover that the land, being situated in the Mooteegunge bazar, could not be of less value than 200 rupees, whereas plaintiff, to defraud Government of stamp duty, had sued on the amount of the kuballah.

The petition of objection, filed by Radha Mohun Barik, appellant in case No. 8, was corroborative of the defence set up by Musst. Toolsee, and that of Nath Das Adheekarry, the sewait of the temple with Musst. Soro, was likewise to the same effect.

The plaintiff, in reply to the objections advanced by defendant, denied that he had omitted from his plaint any information required by Regulation IV. of 1793, and urged that as Kooshalee Barik had neglected to institute an action, as directed by the register when he filed his mozahim, protesting against the registry of the kuballah on the 19th October 1844, he could have no valid claim to the house and land, and as the houses adjoining the one in dispute sold for 30, 40, and 50 rupees, the latter could not be worth 200 rupees, as stated by defendant.

Out of four of the five witnesses whose names are borne on the kuballah, who were examined before the moonsiff, two deposed to its execution by Musst. Toolsee, and two denied having signed it or having been present on the occasion of its being drawn up; but after the expiration of three months, during which the two latter witnesses had been detained in charge of the nazir, by order of the moonsiff, one of them, Guddadhur Pundah, presented a petition, representing that he had eaten some stupifying substance, and was not in full possession of his senses when he gave his evidence, and that he really had attested the kuballah; and the moonsiff decreed the suit with costs in favor of the plaintiff.

The defendant, in addition to the objections set forth in his answers to the plaint, urges in appeal, first, that none of the witnesses deposed that she signed that kuballah, or caused it to be registered, and that two of the witnesses on oath denied witnessing its execution;

and although Guddadhur Misser (Punda) afterwards presented a petition, admitting that he attested it, his assertion is false, and was made to procure his release from confinement, and his petition was not certified on oath; secondly, that Gopeenauth Das, maternal grandfather to Bissenath Das, in order to obtain possession of the house and land under litigation, which adjoins his own, though a vakeel of the court, took advantage of her unprotected condition, (she being a widow,) and caused a mooktiarnamah to be drawn up in his name, and presented the kuballah for registry, and thirdly, that Bissenath Sennaputty, the first purchaser, allowed the suit instituted by him to be struck off for default, after she had filed her jawab, through fear of his part in the fraudulent proceeding being detected.

JUDGMENT.

The house and land under litigation is admitted by both the parties to the suit, to be situated on, and to form part of the dewutter lakhiraj land, belonging to the Lukmeenarain Thakoor, and not only is such land unalienable, but the occupants thereof, for the most part, merely hold possession, as alleged by the appellant, on condition of performing various offices and services connected with the temple; and it is evident, from the fact of Kooshalee Barik, brother of Gobind Barik, appellant's deceased husband, having filed a protest to the registry of the kuballah, and likewise from Bissonath Sennaputty having sued him conjointly with appellant, that Kooshalee Barik had a joint interest in the land with Gobind Barik, and consequently that his son, Radhamohun Barik, mozahim, had the same; it was therefore in every respect necessary to a correct understanding of the case, that the moonsiff should have entered into a careful investigation of the objections of the mozahims, and not have summarily rejected them on the statement of the plaintiff; and more especially so, as there exists great reason to doubt the genuineness of the kuballah; first, because two of the witnesses to the document deny having witnessed its execution; secondly, because of the relationship existing between the other parties connected with it, viz. Gopeenauth Das, the vakeel, who presented the deed for registry, is the grandfather of Bissenath Sennaputty, the first purchaser; and of the two witnesses, who deposed to its execution, Sudaseeb Das is nephew, and Phugissur Paneegrahee is uncle to Gopeenauth Das, and thirdly, Bissenath Sennaputty's selling dewutter land, appertaining to a Hindoo temple, to the plaintiff, who is a Mussulman, is opposed both to custom and precedent. It is therefore ordered, that the decision of the moonsiff be reversed, and the case be remanded to be tried *de novo* by the moonsiff, in order that the claims of the mozahim, appellant in case No. 8, as well as those of the other mozahims in the original suit, together with the objections of the appellant, Musst. Toolsee, may be fully enquired into. The stamp duty on the petition of

appeal to be refunded under Section 8, Regulation XIX. 1817, and the costs of the suit will be chargeable to the party who may be finally cast in the suit.

THE 25TH JANUARY 1849.

Case No. 8 of 1848.

Appeal from the decision of Moulvee Mahomed Farookh, Moonsiff of Balasore, dated 7th December 1847.

Radha Mohun Barik, (Mozahim,) Appellant,

versus

Waris Mahomed, (Plaintiff,) Respondent.

APPELLANT has preferred this appeal against the decision of the moonsiff, rejecting, without enquiry, the objections set forth in his petition to the claim of the respondent, in appeal case No. 6, this day decided; and for the reasons recorded in that case, it is hereby ordered, that the appeal be decreed, and the value of the stamp duty thereon refunded, the question of costs being left for future decision.

THE 25TH JANUARY 1849.

No. 10 of 1847.

Appeal from the decision of Moulvee Mahomed Farookh, Sudder Ameen of Balasore, dated 20th September 1847.

Nubeen Kishore Gooin, (Defendant,) Appellant,

versus

Chuckun Shah, (Plaintiff,) Respondent.

CLAIM, rupees 417-13-7, principal and interest, on account of trading transactions between plaintiff and defendant, the former being a mohajun and the latter his gomastah.

After examination of the accounts, the sudder ameen decreed rupees 217-1-11, principal and interest to date of the decree, payable by defendant to plaintiff; and against this decision the former appealed, but on plaintiff's enforcing the decree, appellant, on the 3rd July 1848, came to a settlement, and filed a *dustburdaree* petition before the sudder ameen. The appeal is therefore struck off the file, the costs to be defrayed by appellant.

THE 31ST JANUARY 1849.

No. 13 of 1847.

Appeal from the decision of Baboo Tarrakaunth Bidiasagur, Principal Sudder Ameen of Cuttack, dated 17th August 1848.

Ghun Punda, (Plaintiff,) Appellant,

versus

Anam Punda, Kanoo Punda, and Rugoonath Das, (Defendants,) Respondents.

THIS action was brought by appellant against the respondents, for possession of 8 annas share of surbarakarry mouzah Ayinda, talook Gopalpore, pergunnah Asseressur, purchased by him at a sale held by the collector in execution of a decree of court. Suit laid at rupees 670.

On the 22nd March 1848, the late judge, Mr. E. Deedes, decreed the appeal with costs against respondents, who preferred a special appeal against his decision to the Sudder Dewanny Adawlut, and the Court, having admitted the appeal, recorded the following observations:

"The defendants in this case were not parties to the suit brought by Purmessur against Bemla Dey, consequently that decree can in no way affect their rights. Moreover, when the judge remarks that he has made no enquiry as to the share Bemla Dey was possessed of in the village, he has omitted to enquire into the very issue on which the case depends. Sales in execution of decrees convey to the purchasers merely the rights and interests of the party or parties answerable under the decree; and when these are disputed, as in this suit, the only point for the court to enquire into is the extent of those rights." Under these circumstances the court annulled the judge's decision, and remanded the proceedings, with directions to restore the case to the file and proceed *de novo* as above indicated. After the receipt of the above orders, the vakeels of the parties to the original appeal having represented that they had received no instructions from their clients to proceed with the suit, the usual notices were served on both parties to attend, and on the 4th November 1848, Ghun Punda, appellant, filed a petition, acknowledging receipt of the notice, but he has since absented himself and failed to proceed with the suit, and the appeal is consequently dismissed under Section 1, Act. XXIX. of 1841.

ZILLAH DACCA.

PRESENT: HENRY SWETENHAM, ESQ., JUDGE.

THE 3RD JANUARY 1849.

No. 50 of 1846.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Meer Hossein-ooddeen, (Plaintiff,) Appellant,

versus

Ramneedhee Dutt, (Defendant,) Respondent.

Vakeels of Appellant—Anund Mohun and Mr. Christian.

Vakeel of Respondent—Gokool Chunder.

SUIT to recover a remittance, principal rupees 399, and interest rupees 399, total Sicca rupees 798, or Company's rupees 851-3-2.

Plaintiff stated he remitted to a friend, through the defendant, cash rupees 399, which sum defendant never delivered, therefore he sued to recover the amount with interest equal thereto. Defendant denied the transaction totally.

The principal sudder ameen dismissed the suit, as the claim was not proven. The remittance is stated to have been made ten or eleven years ago. Plaintiff has no document in support of it; and four witnesses adduced to prove it, are not credible, they are persons living in different parts of the country, and the causes assigned for their presence on witnessing the remittance are void of probability. Furthermore, the defendant obtained a decree against the plaintiff in the moonsiff's court for a bonded debt: plaintiff on that occasion set forth the claim, the subject of the present action, it was then considered by the moonsiff groundless, for though he named several witnesses to prove it, amongst them Lokenauth, Zein-ooddeen, Qadir Mahomed, &c., he brought forward only Lokenauth. In the present action Zein-ooddeen and Qadir Mahomed are not named as witnesses, and the said Lokenauth, who formerly gave his testimony as an eye witness, has deposed only to hearsay.

Plaintiff has appealed, but there are no grounds assigned in appeal to impugn, in the smallest degree, the propriety of the principal sudder ameen's judgment. The appeal is dismissed, appellant to bear the costs.

THE 4TH JANUARY 1849.

No. 18 of 1847.

Appeal from the decision of Syed Abas Ali, Principal Sudder Ameen of Dacca.

Beebee Catherina Aviet Ter Matroos, (Plaintiff,) Appellant,

versus

Robert O'Dowda, Esq., and in succession to him, M. F. G. Sandes, Esq., receiver of 8 annas share of the estate of Khajeh Necoos Marca Pogose, the right and property of Nicholas Petroos, minor son of Petroos Necoos, (Defendant,) Respondent.

Vakeel of Appellant—Hurreekishore Raee.

Vakeel of Respondent—Gokool Chunder.

SUIT to recover a legacy, principal rupees 800, and interest thereon rupees 800.

Appellant states the principal sudder ameen, on the 30th March 1847, decreed Sicca rupees 750, or Company's rupees 800, principal, with proportionate costs, and interest from the day after date of the decree to date of payment. She pleads in appeal for the interest specified in her suit. Respondent denies her right to principal and interest. His pleas will appear noticed under his case of appeal No. 19.

JUDGMENT.

Ordinarily interest is allowed on legacies not discharged one year after the death of the testator. But in this case, it has not been proved that any claim was made for payment of the legacy by appellant, or during her minority by her guardian and manager, before this suit was instituted; therefore, under the provisions of Act XXXII. 1839, appellant does not seem entitled to the interest she claims. But the institution of this suit must be held tantamount to a demand for payment, and from the date of such institution of suit she is entitled to interest. Accordingly in amendment of the principal sudder ameen's decision, I decree to appellant interest at 12 per cent. *per annum* from the 25th August 1846, the date the suit was instituted to the date of payment of the decree. Costs in appeal awarded in proportion.

THE 4TH JANUARY 1849.

No. 19 of 1847.

Appeal from the decision of Syed Abas Ali, Principal Sudder Ameen of Dacca.

Robert O'Dowda, Esq., and in succession to him, M. F. G. Sandes, Esq. receiver of 8 annas share of the estate of Khajeh Necoos Marca Pogose, the right and property of Nicholas Petroos, minor son of Petroos Necoos, (Defendants,) Appellants,

versus

Bebee Catherina Aviet Ter Matroos, (Plaintiff,) Respondent.

Vakeels of Appellant—Gokool Chunder and Nund Lall.
Vakeel of Respondent—Hurreekishore Raee.

SUIT to recover a legacy, principal rupees 800, and interest thereon rupees 800.

This case is the same as appeal case No. 18. The principal sudder ameen decreed the principal, and dismissed the claim to the interest sued. Appellant pleads for the reversal of the decree for the principal. Both parties allowed the legacy was inserted in the will. Appellant urges the suit is barred by the statute of limitations, that more than twelve years had elapsed before the legacy was claimed, and by the will many legacies were made, amongst others 3,000 rupees share and share alike to respondent, to Bebee Mariam, and to their brother Wanis. Wanis died, and therefore his share would go to the reversionary legatees, and not to his heirs, the sisters.

The above are the points for consideration in appeal.

1st. It is evident in this case the possession of the actual occupant, or of those from whom his occupancy may have been derived, has not been under a title *bonâ fide* conveying a right of property to the possessor. For it is provided in the 6th paragraph of the will, that Petroos's and Gregore's right and title in the property arise and emanate after distribution of the legacies. They are appointed residuary legatees. After distribution of the legacies bequeathed, they become entitled to the remainder. Therefore the suit is not limited under the provisions of Section 14, Regulation III. 1793, but is open to cognizance under Clause 4, Section 3, Regulation II. 1805.

Respondent also claimed the legacy as soon as she was of age, viz. eighteen. She was born in 1828, she instituted this suit in 1846. Bebee Mariam also sued for her portion of the legacy. She obtained a decree in the primary court of jurisdiction; it was reversed on appeal by the former judge, Mr. Cooke; but, on admission of special appeal, her right was recognized by the Sudder Dewanny Adawlut, though no ultimate decision has yet transpired.

As regards the second point for consideration, had Wanis died before the testator, his legacy would have lapsed into the residuum;

but Wanis died some years after the death of the testator, his legacy became portion of his effects, held in deposit by the executors to the will. The will made no provision for the disposal of legacies in the event of the demise of a legatee; therefore, his heirs or representatives, according to general usage, were entitled to his legacy, and thus respondent succeeds to a moiety. Under these circumstances the appeal is dismissed, costs payable by appellants.

THE 4TH JANUARY 1849.

No. 38 of 1847.

Appeal from the decision of Syed Abas Ali, Principal Sudder Ameen of Dacca.

Hurreenath Deo, (Plaintiff,) Appellant,

versus

Govindpershaud Rukeet and others, (Defendants,) Respondents.

Vakeel of Appellant—Hurreekishore Roy.

Respondents have not attended by vakeel or in person.

SUIT to recover possession of land, kismut Bishen Batee, &c., valued rupees 19-15.

The case was transferred from the moonsiff of Literagunge to the principal sudder ameen's court, reference having been required to the collector of the district under Section 30, Regulation II. 1819.

The principal sudder ameen, under date the 17th August 1847, dismissed the suit.

On the 15th September 1847, the plaintiff filed a derkhaust of appeal and appointed a vakeel. Since that time he has not presented his pleas of appeal nor enabled his vakeel to do so. Under the provisions of Act XXIX. 1841, the appeal is dismissed and struck off.

THE 9TH JANUARY 1849.

No. 111 of 1848.

Appeal from the decision of Nymooddeen, Moonsiff of Literagunge.

Gooroopershaud Surma Chowdhry and Juggut Chunder Surma Chowdhry, (Defendants,) Appellants,

(Birj Munnee Debbea, wife of Hurris Chunder, Defendant, was exonerated,)

versus

Gobind Chunder Shah, (Plaintiff,) Respondent.

Vakeel of Appellants—Gour Chunder Doss.
Vakeel of Respondent—Rasbeharee Bose.

SUIT to recover balance of account struck 8th Chyte 1251 B. S., rupees 50, and interest rupees 11, 8 annas, total rupees 61, 8 annas.

Decreed by the moonsiff against two of the defendants (appellants,) 24th March 1848.

The reasoning of the moonsiff in this case appears very unsatisfactory, his judgment erroneous.

The depositions of the respondent's witnesses vary in such degree from the plaint of the respondent as to render them not credible: his claim is not proved.

Juggut Chunder, one of the defendants (appellants,) asserted he alone was indebted to the plaintiff (respondent,) that he alone signed the balance of account for himself, for Gooroo, and Hurris Chunder, but that he alone received the rupees 50; that he had repaid the whole, and held a receipt from the respondent, which receipt bears his signature, tested by signatures on his two vakalutnamahs; and three credible witnesses, to whose depositions the moonsiff has not opposed the slightest degree of exception, have verified the receipt. The moonsiff states, because Juggut Chunder wrote the name of Surroop Chunder as witness on the balance sheet, he could attach no credit to his receipt.

The moonsiff's decision is reversed. Decree to appellants; respondents to bear the cost.

THE 9TH JANUARY 1849.

No. 32 of 1846.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Pearee Laul Raee, Luleet Koomar Raee, and Muhes Chunder Raee, (Plaintiffs,) Appellants,

versus

Hurkoomar Thakoor, zumeendar, Taruknath Mustopha, naib zumeendar, Meimar Chunder Raee, meeras pottahdar, Rajeeblochun Chowdree, meeras pottahdar, Bhugwan Chunder Dutt, tushildar, and Musst. Parbuttee, widow of Joynarain, (Defendants,) Respondents.

Vakeel of Appellants—Rammonee Bhose.
Vakeel of Meimar Chunder Raee, Respondent—Gholam Abas.
Vakeel of Rajeeb Lochun, Respondent—Nund Laul.
Vakeel of Musst. Parbuttee, Respondent—Gour Chunder.
The other Respondents have not attended in person or by vakeel.

SUIT for possession of 133 beegahs, 4½ kottahs of land, jote jumma, appertaining to 12 annas share kismut Majkandee and Gowaldangee, &c., valued at rupees 1,332-4, and mesne profits rupees 1661, 7 gundahs, total rupees 2993, 4 annas, 7 gundahs.

Plaintiffs claimed the land by purchase on the 16th Assar 1237 B. S., they had been dispossessed since 1240. This suit was instituted

the 2nd Sawun 1252, but plaintiffs had intermediately sued, the 20th Pous 1251, on which occasion they were nonsuited, the 13th Assar 1252. The principal sudder ameen dismissed the suit, recording the following grounds: The suit was barred by the statute of limitations. From the date of purchase fifteen years, and from the date of dispossession twelve years four months to the date of institution of the suit had elapsed; and that the intermediate suit nonsuited, did not, under the provisions of Act XXIX. 1841, Section 2, and Construction No. 813, render the present suit cognizable. Secondly, this suit has been undervalued. The value has been assumed rupees 10 per beegah: the actual value, as proved by the record, is rupees 15 per beegah. Thirdly, plaintiffs state they purchased from Musst. Kurroonamoee. She had not the power to sell the property. Her mother is Parbutty, who is still living, and she is the wife of the original acquirer, Joynarain, and Kurroonamoee has two sons living.

The plaintiffs have appealed. On perusal of the petition of appeal and the record of the case, the points for consideration appear to be:

First—Is cognizance of the suit barred by lapse of time or not?

Secondly—Did Kurroonamoee sell the property to the appellant? and, if so,

Thirdly—Was such conveyance legal?

Fourthly—Was the suit correctly valued?

As regards the first point, counting from the alleged time of purchase to date of institution, cognizance of the suit would be barred by Section 14, Regulation III. 1793, but the cause of action must be held to have arisen at the period of dispossession, viz. 1240. The principal sudder ameen calculates that even then the suit is barred, as twelve years and six months elapsed before the suit was instituted, but the appellant is entitled to a deduction from that period of the length of time the nonsuited intermediate case pended in the court, that is to say, five months and twenty-three days. On this view of the case the suit would be cognizable. It is not however satisfactorily proved that appellants had possession, as alleged, for two or three years, and that they were dispossessed in 1240, although three witnesses have deposed to the fact. When the intermediate suit was entertained, Neel Madhub, the father of Rajeeb, objected he held possession of a moiety of the property under two meeras pottahs of 4 annas share each, granted by Musst. Parbuttee, respondent, one in Assin, the other in Poos 1225, and that he had not been included as a defendant. The said pottahs were filed and proved, as well as possession, by four credible witnesses, and consequently the suit was nonsuited. No appeal was made therefrom.

Vide decision of the Sudder Dewanny Adawlut, 25th November 1846, printed report, Chedam Mundul and others, Appellants.

Meimar Chunder Rae, another respondent, is stated to hold possession on a meeras pottah from Musst. Parbuttee, dated 1236, for the other moiety.

As to the second point, Kurroonamoee seems to have sold the property the 16th Assar 1237, fifteen years before the suit was instituted, the kubooleeut on stampt paper was registered 17th August 1830, two subscribing witnesses have deposed to the validity of the deed, and one has deposed to the written consent thereon of Parbuttee for a consideration of rupees 50. But,

Thirdly—It appears Kurroonamoee, daughter of Musst. Parbuttee, had two sons. Parbuttee was the widow of Joynarain, the original acquirer of the property. Parbuttee denies the transfer *in toto*. On the death of her husband she was entitled to possession, but neither she nor her daughter, having sons living, could transfer the property by sale or gift, according to the Shasters, unless on special grounds provided for, but which are not pleaded in this case.

Macnaghten's Hindoo Law, vol. 2, page 33.

Fourthly—The records of the case prove the suit undervalued.

I concur generally in the judgment of the principal sudder ameen, though I differ a little in the grounds thereof. I accordingly affirm his decision, and dismiss the appeal: appellants to be charged with costs.

THE 13TH JANUARY 1849.

No. 12 of 1847.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Hurree Mohun Bunnick Shah and Kishen Govind Bunnick Shah, (Plaintiffs,) Appellants,

versus

Bissumber Sirdar, (Defendant,) Respondent.

Vakeel of Appellants—Hurreekishore Roy.
Vakeel of Respondent—Nund Laul.

To recover the value of opium, rupees 997-5-4.

On the 17th March 1845, the sudder ameen dismissed the suit, the claim not being proved. On appeal, it was remanded for further investigation. Proofs and counterproofs were called for by the sudder ameen, a length of time elapsed, and plaintiff produced no further proof, documentary or oral. The suit was accordingly again dismissed, 20th January 1847. Plaintiff has appealed. On perusal of the record, it appears plaintiff, in his reply, stated his claim was founded on a hath-chittee buhee, and five witnesses were examined in support of his suit: these however did not prove the validity of that record, or the plaintiff's pleas in general: appellant has no further pleas to adduce. Therefore, there are no grounds for interfering with the sudder ameen's decision, which, without summoning the respondent, is affirmed, and the appeal dismissed. The parties to bear their costs respectively in appeal.

THE 13TH JANUARY 1849.

No. 145 of 1848.

Appeal from the decision of Gobind Chand Bose, Moonsiff of Pulas.

Sheik Jarullah, (Plaintiff,) Appellant,

versus

Sheik Azmut, Sheik Askhur, and Sheik Aces Alif, (Defendants,) Respondents.

SUIT to recover a debt, amounting, with interest, to Company's rupees 3-15-4.

The claim not being proved, the moonsiff dismissed the suit on the 29th April 1848. Plaintiff appealed, but has neglected to proceed with his suit, for a period exceeding six weeks: therefore, under the provisions of Act XXIX. 1841, the appeal is dismissed.

THE 13TH JANUARY 1849.

No. 226 of 1848.

Appeal from the decision of Kaleekinker Sein, Moonsiff of Naraingunge.

Sreekishen Manjhee, (Defendant,) Appellant,

versus

Gour Chund Manjhee, (Plaintiff,) Respondent.

Vakeel of Appellant—Rasbeharee Bose.

SUIT to recover hire of a boat and wages, rupees 38-12.

The moonsiff, on the 7th August 1848, decreed rupees 25-6-9, and dismissed the remainder.

Defendant appealed without filing pleas: having neglected to proceed with the suit for more than six weeks, the appeal is dismissed under Act XXIX. 1841.

THE 13TH JANUARY 1849.

No. 244 of 1848.

Appeal from the decision of Moulvee Abdoollah Khan, late Moonsiff of Dacca.

Heera Laul and Sree Laul, (Defendants,) Appellants,

versus

Musst. Minar, (Plaintiff,) Respondent.

SUIT to recover brass articles, &c., or their estimated value, rupees 31-12.

Decreed by the moonsiff 17th August 1848. Defendants appealed without filing pleas: appellants have neglected to proceed with their suit for more than six weeks; therefore the appeal is dismissed under Act XXIX. 1841.

THE 13TH JANUARY 1849.

No. 267 of 1848.

Appeal from the decision of Nymoodeen, Moonsiff of Lethragunge.

Kasheenauth Dey, (Defendant,) Appellant,

versus

Musst. Purusmunnee, (Plaintiff,) Respondent.

SUIT to recover a balance of rent, with interest, rupees 9-2-4.

The moonsiff decreed the amount on the 30th October 1848. Appellant filed no pleas, and has neglected to proceed with his suit for more than six weeks: the appeal is, therefore, dismissed under the provisions of Act XXIX. 1841.

THE 19TH JANUARY 1849.

No. 15 of 1846.

Appeal from the decision of J. Reily, Esq., former Principal Sudder Ameen of Dacca.

Musst. Hursoonduree, widow of Radhakant Raee, mother of Behareekant Raee, minor, and Chunderkant Sein, (Defendants,) Appellants,

versus

1, Sumbhoonath Raee, on his demise, Nubeen Chunder and Kishore Chunder, his sons; 2, Joynath Raee; 3, Gooroopershaud Raee, on his demise, Nubokishen, his son; 4, Ram Lochun Raee; 5, Goureenath Raee; 6, Chundernath Raee; 7, Rauj Chunder Raee; 8, Goluck Chunder Raee; 9, Ram Chunder Raee; 10, Kasheekant Raee; 11, Sreenath Raee; 12, Ram Doolub Raee; 13, Gour Chunder Raee; 14, Ram Gopal Raee; 15, Radhamadhub Raee; 16, Muhes Chunder Raee; 17, Lukheekant Raee; 18, Ramnath Raee; 19, Ramdhun Raee; 20, Madhub Chunder Raee; 21, Musst. Treepoora, widow of Ramnath Raee; 22, Musst. Rajessuree, widow of Gungadhur Raee; 23, Musst. Gourmonee, widow of Essan Chunder Raee; 24, Musst. Anundmoee, widow of Ramkoomar Raee; 25, Musst. Ooma Moee, widow of Kishenkoomar Raee; 26, Musst. Sheosoonduree, widow of Rajkishore Raee; 27, Musst. Kirpa Moee, widow of Kaleenath Raee; and 28, Kalee Doss Neogee, (Plaintiffs,) Respondents.

Vakeels of Appellants—Nund Laul and Juggomohun.

Vakeels of Respondents, numbered 1-2-3-4-7-8-9-10-11-14-16-18 *and* 19—*Gour Chunder and Pudum Lochun.*

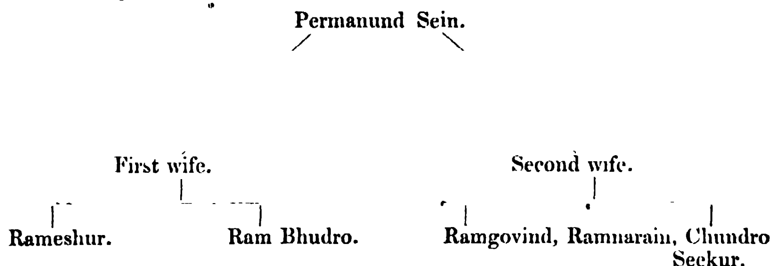
The remainder of the Respondents defaulting.

SUIT to recover possession of 8 annas share in mouzah Bithoora, with mesne profits, valued at rupees 1,483-15-6-2-2.

Plaintiffs set forth, the ancestors were proprietors of 11 annas of tuppeh Aurungabad; the defendants were proprietors of the remaining

5 annas. They divided their lands in the Bengalee year 1091: half of mouzah Bithooa, consequently, went to pergunnah Rajnugur, half fell to their 11 annas share, the other moiety to defendants' 5 annas share. In 1227 Hursoonduree defendant's ancestor, Kishenkanth, took a zimma of their shares and paid the rents to 1232. His son, Radakanth Race, then took the property in farm, (ijarah,) on expiration of the lease he refused to surrender possession, and from Bysack 1242 had dispossessed them. They sued in the moonsiff's court, but were nonsuited for dividing the claim.

Defendants answered, the original ancestor of both parties was Permanund Sein, who had two wives; two sons by the first wife, and three by the second, thus:



that, according to this scale, defendants' share would be 9 annas 12 gundahs. Plaintiffs' ancestors had filed an ismnuvees putwaree, specifying the shares differently before the collector, who, on petition of defendants' ancestors, directed (17th June 1824) the parties should continue to hold according as they might be respectively in possession. Defendants' ancestors then filed the butwara chitta of the year 1091, but it was rejected, and the parties referred to the court.

The fact is no butwara ever took place; defendants' ancestors held possession of a moiety in some villages, and in some instances held the entire village.

Plaintiffs and their ancestors were never in possession of the village now litigated; defendants' ancestors never took a zimma, or lease, of the said village. Kalee Doss Neogee (one of the plaintiffs) is the adopted son of Bandoo Raee's daughter: according to the shasters he is not entitled to his maternal grandfather's estate. In Goureenath's case the Neogee lost his claim on this plea.

Plaintiffs' co-sharer, Joy Doorga, has not sued. The villages in plaintiffs' possession are more than they are entitled to, and as they had not paid rents from 1243, defendants were on the eve of suing them for the surplus lands.

Plaintiffs replied that Kalee Doss Neogee was hereditary proprietor of the estate, that Joy Doorga had gifted her share to Lukheekant, Hurnath, and Madub Chunder.

The principal sudder ameen resolved the following points for adjudication:

First—Have plaintiffs been in possession of the lands?

Second—Is their claim barred by lapse of time?

Plaintiffs filed an authenticated copy of a butwara chitta, dated 1091. This chitta appears from the collector's roobucaree, dated 17th June 1824, and from defendants' answer, to have been filed by Kishenkant Sein, one of the defendants' ancestors. There can be no doubt, therefore, that the document is authentic, and it clearly records that Bithooa, the village under question, belongs half to Ram Bhudro Sein, one of the sons of the first wife, and half to Ramgovind Sein, one of the sons of the second wife.

Plaintiffs file a zimma-nameh signed by Kishenkant, the same individual who filed the preceding document: it is dated the 5th Bhadoon 1227, it professes to have taken the zimma of 8 annas of kismut Bithooa for 2 rupees annually from 1227 to 1232. It bears the names of Gokool Chunder Mitter, Ramnarain Deo, and Radamohun Sein, of whom the two last have been examined, and they prove that Kishenkant executed the deed.

Plaintiffs file an ijareh kubooleeut, dated 8th Kartick 1235, signed by Radakant Sein, the husband of Hursoonduree defendant. It is to the effect, that Radakant has taken the farm of 8 annas of Bithooa from 1235 to 1236 for rupees 5-8, annually. It is attested by Juggomohun Deo, Petamber Seekdar, and Raujkishen Doss.

Plaintiffs file a kubooleeut, dated 12th Kartick 1840, signed by Radakant Sein. It is to the same effect as above, the period being from 1240 to 1241. It is attested by Raujkishore Doss, Kebulkisto Doss, and Juggomohun.

The foregoing kubooleeuts are proved by the evidence of Raujkishore Doss and Juggomohun. Plaintiffs filed two nekas for 1234 and 1235, and several challans and khuts: they were not proved.

The collector's roobucaree, the toujee nuvees's report, and the collector's dakhilas shew that the jumma paid by the parties are in the proportion of 11 annas by plaintiffs and 5 annas by defendants, but it is not necessary to pronounce on this point.

From the foregoing documents the principal sudder ameen considered the plaintiffs' claim to a moiety of Bithooa clearly proved. But Joy Doorga was not made a party in the claim, and she denies having gifted her share to plaintiffs.

In regard to lapse of time, defendants appear to have been long in possession, but it has been proved they held under zimmas and ijarahs. The kubooleeut dated the 12th Kartick 1240, indeed proves that, from the end of the term, that is Chyte 1241, to date of plaint, 15th Maugh 1251, ten years have not entirely elapsed.

The principal sudder ameen, therefore, deducting her (Joy Doorga's) share, 2 annas, 6 gundas, 1 cowree, decreed the rest of the claim to plaintiffs, with wasilat from 1242. This decree was passed the 26th February 1846.

Defendants have appealed. Appellants have brought forward several pleas, but the principal pleas are:—first, that respondents' ancestors repudiated the butwara dated 1091, when appellants' ancestors laid it before the collector, as is shewn by the collector's roobucaree of the 17th June 1824, and, though formerly rejected, they now found their claim on it; secondly, that respondents admitted appellants were in possession before the date of the collector's roobucaree, 17th June 1824, and that twenty-two or twenty-three years expired from that date before they sued for possession.

With reference to the second point the local ameen was directed, on the 7th August 1848, to investigate locally whether respondents had possession of mouzah Bithooa before 1227. The ameen's report is that, from the testimony of the greater proportion of witnesses examined, he came to the conclusion that appellants were in sole occupancy previously to 1227. On this report I do not attach much weight: moreover appellant paid the ameen's expenses.

The question is, have appellants exclusive right and title to mouzah Bithooa? Hereditarily they have not, on their own shewing, for byinheritance they state 9 annas 12 gundas share would be theirs, and 6 annas 8 gundas, respondents': both parties allow their shares are not regulated by hereditary descent. The only document produced allotting the village under litigation is the butwara of 1091, alluded to in the collector's roobucaree of the 17th June 1824. That document distinctly specifies the village, by name, as belonging in equal shares to the ancestors of the appellants and respondents: that document was filed by the ancestors of appellants to prove the extent of their rights. The appellants have no document to establish their claim to a larger proportion. They plead respondents' ancestors denied the allotment specified in the butwara of 1091. Respondents explain, on that occasion this individual mouzah was not the subject at issue but the entire property, which they claimed in the proportion of 11 annas. A reference to the collector's proceedings, 17th June 1824, establishes the correctness of this explanation.

It has been satisfactorily proved respondents had possession till 1241 B. S., the suit was instituted in 1251, and therefore was not barred by the statute of limitation. Under these circumstances there appear no grounds for interfering in the decision of the principal sudder ameen, which is hereby affirmed. The appeal is dismissed: appellants to bear the costs.

THE 22ND JANUARY 1849.

No. 6 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Azeem Sirdar, (Defendant,) Appellant,

(Shabaz, Zumeer, Bhoran, and Anund, Defendants, have not appealed,)

versus

Kaleepershaud, (Plaintiff,) Respondent.

Vakeels of Appellant—Nund Laul and Juggomohun.

Vakeels of Respondent—Roop Chunder, Gholam Abas, and Pudum Lochun.

SUIT to recover a balance of account per khata buhee, rupees 793-4.

Plaintiff stated, Azeem Sirdar, on the 5th Bysack 1254, desired him to pay to the other four defendants such sums of money as they required during his absence, he was going to Narraingunge for four or five days. They would have to deposit rupees 1,050 as security in the abkaree department on account of pottahs taken by them. They would lodge with him (the plaintiff) receipts of the sums deposited, and on his return he would sign the khata buhee and receive back the deposit receipts. On the 6th Bysack 1254, Shabaz, Zumeer, Bhoran, and Anund took from the plaintiff rupees 901. They signed the khata buhee, and Azeem's name was included in the account.

From the 20th to the 29th Bysack, the same individuals took rupees 356-6, and they repaid rupees 459-2. Azeem never signed the khata buhee, and the other four defendants stopped business. Plaintiff, therefore, claimed the balance of account, rupees 798-4.

Azeem answered he had no concern in this case, that he was not connected in business with the other defendants, that he had not spoken to the plaintiff on the subject, that plaintiff had induced the other defendants to admit the claim with the view to entangle him. Was it probable that plaintiff should advance so much money merely on his speech? He had taken no money from the plaintiffs, and had not signed his khata buhee. He had not taken abkaree pottahs in his own, or in others' names, and he had made no abkaree security deposit, which is proved by the abkaree superintendent's proceedings. The fact is he formerly had dealings with the plaintiff, by whom he was cheated right and left, that he intended to bring an action against him for money due, and that he had been forestalled.

Zumeer and Bhoran, defendants, answered, they had taken no money from the plaintiff, nor lodged deposit receipts with him; Shabaz and Anund may have deposited receipts with plaintiff, out of spite to them, and constituted them with themselves, defendants.

The sudder ameen decreed against all the defendants. He considered that plaintiff advanced the money, at the expressed desire of Azeem, under an impression of his respectability, as proved by the evidence of witnesses, and the deposition of the abkaree darogah especially.

Azeem only has appealed. The evidence noticed by the sudder ameen has been adverted to. It appears the darogah, Bheem Churn Ghose, deposed, he thought Azeem was a partner with the other defendants, Zumeer and Bhoran, because he had recommended them, and because on some former occasion he had arbitrated shares. Evidence is given by plaintiff's (respondent's) witnesses with the view to prove Azeem a partner, and that the loan was made on his supposed substantiality. It is not satisfactorily proved that Azeem was a partner with the other defendants, and the other supposition cannot be held to impose pecuniary obligation on the appellant.

If, on his reputation, the appellant argues the loan of rupees 901 was made on the 6th Bysack, why, when he failed to appear and sign the khata buhee in four or five days, according to alleged promise, did respondent make a further loan of rupees 356 between the 20th and 30th of Bysack?

Respondent has no documentary proof whatever against appellant, nor has a claim of any nature been established against him in this suit. The decision of the sudder ameen is therefore amended, and the appeal decreed: appellant is exonerated from the claim of the respondent. The respondent to be charged with the costs of the appellant in both courts.

ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, ESQ., JUDGE.

THE 22ND JANUARY 1849.

No. 330 of 1847.

Appeal from the decision of Bydnath Surma, Moonsiff of Sheebgunge, dated the 10*th December* 1847.

Peeroo Khan and Jumyut Khan, (Defendants,) Appellants,

versus

Juggutnarain Shah and Kuncheram Das, (Plaintiffs,) Respondents.

CLAIM, possession of 10 beegahs, jumma rupees 5, under a pottah granted by Sohobut, jotedar, dated the 18th Bysack 1248, from which they were ousted in Chyte 1249. The defendants, Peeroo Khan and Jumyut Khan, state that Sohobut (also a defendant) sold them his jote of 19 beegahs, 10 cottahs, jumma rupees 7-14, for rupees 19-8, on the 2nd Aghun 1249, and that he obtained a pottah for the said jote from the gomastah of the ijaradar on the 2nd Aghun 1249, and further that the plaintiffs' pottah, not being mentioned in the kuballah, must be a forgery. The defendant Sohobut, in his answer of the 18th March 1845, stated that he had informed the purchasers of his jote of the plaintiffs' pottah, and told them to demand rent accordingly, but in his petition of the 10th March 1846, he asserted that the pottah was dated the 29th Bysack 1248, for eighteen months, and filed the corresponding kubooleeut. On the 5th February 1847, Sohobut again petitioned and filed the copy of a decree against him, his apparent object being to prove that he had been in another part of the country on the 18th Bysack 1248, the date of the plaintiffs' pottah said to have been granted by him. The plaintiff Juggutnarain subsequently filed a copy of a decree against him, to prove that he had been in another part of the country on the 29th Bysack 1248, the date of the eighteen months' kubooleeut filed by Sohobut. Both cases were decided *exparte*, and had been instituted while the case was pending. Lokonath, one of Sohobut's witnesses, having asserted that he wrote the eighteen month kubooleeut in the absence of the plaintiff, at the request of Peeroo Khan defendant, one of the purchasers of the jote, the moonsiff referred the case and was directed to take the witnesses' answer and evidence touching the supposed forgery. The moonsiff has now decreed the case

on the pottah filed by the plaintiff and the evidence in support of it: and, considering the kubooleeut, filed by Sohobut, a forgery, recommends that he, with the writer of and witnesses to it, be committed for their respective shares in the forgery and perjury. Lokonath, the writer of the said kubooleeut, managed to abscond when the case was formerly referred, and Sohobut and the witnesses to it are now reported "not forthcoming." Fortunately this is immaterial, as I don't agree with the moonsiff. The foundation of his decision is the *exparte* decree filed by the plaintiffs, from which it would appear that Juggutnarain was in another district on the date of the kubooleeut filed by Sohobut. I do not consider it, or the one filed by Sohobut, of any importance. Both cases are for small amounts, were decided *exparte*, and instituted while this case was pending, and some two years after it was instituted. I am of opinion that Sohobut, who sold his jote, was all along in league with the plaintiffs to defraud the purchasers, and that his pretended aid to them by filing an absurd kubooleeut, supported by a witness, who asserted that he wrote at the request of the purchasers, was intended to benefit himself and the plaintiffs by retaining the best part of the jote he had sold at a fixed rent. The jote consisted of 19 beegahs 10 cottahs, and was purchased for rupees 19-8, which does not look as if the purchasers knew that the greater part of it had been made over to a third party, and the names of the purchasers were substituted in the zemindaree accounts for that of the jotedar, Sohobut, without demur. On the above grounds, I reverse the moonsiff's decision, and decree the appeal with costs.

THE 23RD JANUARY 1849.

No. 191 of 1847.

Appeal from the decision of Mahatabooddeen, Moonsiff of Kulliagunge, dated the 3rd May 1847.

Gubru Mundul and Panchoo, (Defendants,) Appellants,

versus

Fureekoola, (Plaintiff,) Respondent.

CLAIM, rupees 135-2, due on a bond for rupees 93, dated the 25th Bhadoor 1249 B. S.

The defendants plead payment in cash and grain. The case is detailed in the Decisions of the Zillah Courts for February 1847. The moonsiff has again decreed the case, overruling the evidence for the defendants as to payments previous to that of rupees 26, the balance formerly proved, which I consider good, supported as it is by the circumstances detailed in my former decision. On the said grounds and evidence, I reverse the moonsiff's decision, and decree the appeal with costs.

THE 23RD JANUARY 1849.

No. 274 of 1847.

Appeal from the decision of Manick Chunder Shome, Additional Moonsiff of Rajarampore, dated the 29th July 1847.

Kumul Lochun Dhur, (Plaintiff,) Appellant,

versus

Dugdee and Poddoo, (Defendants,) Respondents.

CLAIM, rupees 138-15-6, due on a bond for rupees 125, dated the 19th Phalgoon 1252. The defendants (prostitutes) deny the authenticity of the documents, and state that the plaintiff's father-in-law used to visit them, that the plaintiff wished to do likewise; that they had frequent quarrels; that the plaintiff has no property or employment to enable him to become a money-lender, and that a loan of such an amount to them without security is incredible.

The moonsiff dismissed the case, on the grounds of discrepancies in the evidence for the plaintiff, two of his witnesses having been charged with perjury in a case pending, the plaintiff being without means or employment to warrant a loan of the amount, and the defendants' plea of enmity being established. I agree with the moonsiff, and dismiss the appeal with costs.

THE 23RD JANUARY 1849.

No. 275 of 1847.

Appeal from the decision of Manick Chunder Shome, Additional Moonsiff of Rajarampore, dated the 29th July 1847.

Dugdee and Puddoo, (Defendants,) Appellants,

versus

Kumul Lochun Dhur, (Plaintiff,) Respondent.

THIS is the same case as that detailed in case No. 274 of 1847, the ground of appeal being that the moonsiff had not made the defendants' costs payable by the plaintiff. I see no ground for interfering with the moonsiff's decision, and therefore dismiss the appeal with costs.

THE 26TH JANUARY 1849.

No. 203 of 1847.

Appeal from the decision of Rowshun Alli, Officiating Moonsiff of Putneetullah, dated the 11th May 1847.

Kishore Chund, (Plaintiff,) Appellant,

versus

Joddoonath Sundyal and others, (Defendants,) Respondents.

CLAIM, the reversal of a kubooleeut, dated the 2nd Bysack 1253. The defendants state that the plaintiff gave the kubooleeut willingly, and is in possession of the land. The acting moonsiff dismissed the case on the evidence of fifteen witnesses for the defendants, to the kubooleeut having been given willingly, overruling the evidence of four witnesses for the plaintiff on account of discrepancies, added to the fact that the plaintiff did not complain in the foujdaree of the kubooleeut having been forcibly taken from him, though recommended by the darogah to do so, and that in his petition, accusing the zemindar's naib of having caused the death of his brother, said to have been kept in durance with the plaintiff, in the matter of the kubooleeut, he stated that he sold 30 rupees worth of bamboos to pay for his release, but did not mention from what land the said bamboos were obtained. The plaintiff's story is that he held a jote of 19 rupees, 12 cowrees, jumma 15 rupees, for which he paid to the end of 1252; that on the 29th Chyte of that year he gave his istafa to the zemindar's naib, who being annoyed forced him on the 2nd Bysack 1253 to take a pottah for 57 biggahs, $8\frac{3}{4}$ cottahs, jumma rupees 45-12, and made a mohurer write out a kubooleeut corresponding; that he (the plaintiff) forthwith complained at the thannah, and, on the 16th Assar following, instituted this suit for the reversal of the said kubooleeut. The defendants' answer is a long detail about the plaintiff's having taken, some years before, two jotes, jumma 43 rupees; there having been a balance of 74 rupees (and a fraction remitted); his having paid 3 rupees, and given a bond for the balance 71 rupees; his having sub-let $1\frac{1}{2}$ beegah and sold bamboos. This, however, is altogether unsupported, except by witnesses who could be produced in any number by a zemindar under such circumstances. The bamboo selling portion is intended to prove the plaintiff's having been in possession of the jote, and in support of it the defendants have filed a copy of the plaintiff's petition in the foujdaree (two months after this suit was instituted) accusing the zemindar's naib of having (on the pretence of a balance of 27 rupees) confined and beaten him and his brother, who died three days after in consequence. In this petition the plaintiff states that he sold 30 rupees worth of bamboos, and paid 27 rupees to the naib to obtain his release. This portion of the petition the defendants would make use of, to prove that the bamboos were taken from the disputed jote to

pay a balance due, which by no means follows under any circumstances, and is in this instance in direct contradiction to their own story, that the plaintiff had previously paid part of his balance and given a bond for the remainder. Were the moonsiff's decision confirmed, the plaintiff would not only be burdened for five years with the annual payment of 45 rupees for land, which he declines having any thing to do with, but he would probably also be sued for 71 rupees on the bond, said to have been given by him at the same time as the kubooleeut, and prevented from recovering the 27 rupees, extorted from him after the institution of this suit, when, according to the defendants' own showing, their claim against him had been settled.

If the plaintiff settled his balance, gave a kubooleeut, and also a bond on the 2nd Bysack, (as stated by the defendants,) it is most improbable that on the next day he would have complained at the thannah, and within three months instituted this suit for the reversal of the kubooleeut without any mention of the bond. Under such circumstances also there could not well be any foundation for the plaintiff's complaint in the foujdaree, as to his seizure shortly afterwards for a pretended arrear of rent distinct from the said bond. On the above grounds I reverse the acting moonsiff's decision, and decree the appeal with costs.

THE 31ST JANUARY 1849.

No. 246 of 1848.

Appeal from the decision of Ramnarain Roy, Moonsiff of Putteeram, dated the 17th August 1848.

Zureef Mundul and Arif Mundul, (Defendants,) Appellants,

versus

Moteeoollah, (Plaintiff,) Respondent.

CLAIM, rupees 296-4-5, rent due for the years 1243 to 1248, according to a kubooleeut by the defendant's father (Golamee Mundul, deceased,) dated the 26th Jeit 1253. The defendants deny the kubooleeut, and plead that the land was cultivated by Omrao Mundul and Karamtoollah, who paid the rent to Nuzer Mohamed, uncle of the plaintiff, then a minor.

The case is detailed in case No. 12 of 1847, Decisions of the Zillah Courts for February 1848, and was remanded to take evidence touching the payment of rent to Nuzer Mohamed on account of the plaintiff. The moonsiff formerly decreed the case in full for six years, though the kubooleeut was for three years only, and the plaintiff had declined to prove that the defendants' father was in possession, ruling also that the payment of the rent by Omrao Mundul to Nuzer Mohamed could not be enquired into, they not being parties to the case. The moonsiff has now decreed three

years' rent, overruling the dakhilas for rent paid to Nuzer Mohamed on the ground of discrepancies in the evidence to the payment, and the signature of Nuzer Mohamed on one of the dakhilas not tallying with his signature on other documents in the record. This case is connected with others, which make it clear that the plaintiff and Nuzer Mohamed were relations and partners in business, and that the latter was manager during the minority of the former. The land for which rent is claimed was purchased by the plaintiff from Omrao Mundul, and the dakhilas filed are in the name of his brother, Karamtoollah; and it appears to me most improbable that dakhilas in his name should have been produced had the land been actually cultivated by the father of the defendants, who are brothers-in-law to Omrao Mundul.

Two of the dakhilas tally (with a slight difference as to date) with two payments acknowledged by the plaintiff, and the one alluded to by the moonsiff, as differing in the signature, appears to me much the same as the others, in that respect.

There are two dakhilas and a letter filed by the plaintiff's witnesses with Nuzer Mohamed's signatures rather different from those on the others, but they are quite as much open to suspicion on that account as the others, and a man may write differently on different occasions, particularly if he or his partner are capable of suing for money they have already received. On the above grounds, I reverse the moonsiff's decision, and decree the appeal with costs.

THE 31ST JANUARY 1849.

No. 262 of 1848.

Appeal from the decision of Ramnarain Roy, Moonsiff of Putteeram, dated the 17th August 1848.

Moteeoollah, (Plaintiff,) Appellant,

versus

Zureef Mundul and Arif Mundul, (Defendants,) Respondents.

THIS is an appeal by the plaintiff against the same decision as that detailed in case No. 246 of 1848, in which the moonsiff decreed rent for only three of the six years sued for. On the grounds given for the reversal of the moonsiff's decision in that case, I dismiss this appeal with costs.

THE 31ST JANUARY 1849.

No. 13 of 1847.

Appeal from the decision of Ramnarain Roy, Moonsiff of Putteeram, dated the 11*th December* 1846.

Omrao Mundul, (Defendant,) Appellant,

versus

Moteeoollah, (Plaintiff,) Respondent.

CLAIM, rupees 53-5, due on an ikrar for Sicca rupees 25, dated the 26th Jeit 1243. The defendant pleads payment in Maugh 1243, and states that the plaintiff, instead of giving him credit in this case, has credited the payment in another case against him on an account with which he had no concern. The moonsiff decreed the case on the evidence for the plaintiff, as the defendant had not proved the asserted payment.

The case alluded to by the defendant is No. 16 of 1847, decided on the 3rd of April 1848, in which he was sued as the heir of his brother Kutubooddeen; and in it the plaintiff acknowledges a payment of 25 rupees in Maugh 1243, but without stating through whom it was received. In that case, however, I was satisfied that there was nothing due on account of Kutubooddeen, without crediting the payment of 25 rupees in Maugh 1243, the balance having been paid by his surety, and in this case the defendant has produced two witnesses to the said payment.

I therefore reverse the moonsiff's decision, and decree the appeal with costs.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, ESQ., JUDGE.

THE 12TH JANUARY 1849.

Case No. 46 of 1847.

Regular Appeal from the decision of Baboo Loknauth Bose, Second Principal Sudder Ameen, dated 7th November 1846.

Moheshchunder Singh, (Plaintiff,) Appellant,

versus

Dokooree Beebee and eighteen others, (Defendants,) Respondents.

CLAIM laid at Co.'s rupees 1,150-15-15, to obtain possession of a share of a jumma, with mesne profits.

The plaint sets forth that there was a jumma in the names of the plaintiff and of his brother, Konick Chunder, in the records of the zemindar's office, in the village of Jigrah, pergunnah Ramchunderpore, amounting to rupees 99-13-8, and that in the year 1245 the plaintiff was dispossessed of his half share of the said jumma by the defendants, and therefore the suit was instituted to recover possession with wasilat, and the value of certain property which had been plundered from the plaintiff when he was dispossessed.

Dokooree Beebee, one of the defendants, replies that the plaintiff and his brother, Konick Chunder Singh, sold to her husband the jumma in question in the month of Bysack 1245; and that her husband (since dead) had thus become legally in possession of the property, and denies that the plaintiff was ever forcibly dispossessed, and produces the deed of sale.

The second principal sudder ameen states that he considers that the plaintiff has in no way supported his claim to possession of the property, and that his witnesses do not clearly corroborate the statement made by the plaintiff, and that the copy of the kubooleeut, which is produced, and which was obtained from the collector's office, is invalid from its not bearing the signature of any official, and that the other documents filed by him are not deserving of credit; and the principal sudder ameen considers that, by the deeds filed by the defendants, the sale of the property to Moonshee Hafizoodeen, the husband of Dokooree Beebee, is established, and he dismisses the case.

From this order an appeal is made to my court; and on looking over the papers of the case, I think that the principal sudder ameen seems to have hurried over the investigation of the case, and that the

appellant had not the option of producing all his witnesses; besides it is pointed out that there are some points of enquiry uninvestigated by the second principal sudder ameen with reference to the deed of sale, filed by the respondents, in which the grandfather of the sellers of the property is inaccurately mentioned. I therefore remand the case for re-trial.

THE 13TH JANUARY 1849.

Case No. 4 of 1849.

Regular Appeal from the decision of Moulvee Abdoolah, Moonsiff of Sajeally, dated 27th July 1838.

Hurnath Mookerjee and Mohunchunder Mookerjee, sons of the late Shonatun Mookerjee, (Defendants,) Appellants,

versus

Kisto Kantto Potdar, son of Ramcomar, (Plaintiff,) Respondent.

CLAIM laid at rupees 100, on account of a bond debt.

The moonsiff decreed this case *exparte*, but on the case being appealed, I find that the enquiry regarding the notice and advertisement enjoined in Regulation XXIII. 1814, Section 22, and Construction No. 775, had not been properly conducted. I therefore order the case to be remanded for re-trial, and the appellant to receive the value of the stamp of appeal.

THE 13TH JANUARY 1849.

Case No. 5 of 1849.

Regular Appeal from the decision of Baboo Tarucknauth Bose, Moonsiff of Noabad, dated 7th April 1847.

Ajoodyaram Bose, (Defendant,) Appellant,

versus

Bosodha Dassia and Shamachurn Nagh Chowdree, (Plaintiffs,) and Ramonee Dassia and thirteen others, (Defendants,) Respondents.

CLAIM laid at rupees 110.

This case was instituted by the plaintiffs to recover from the defendants a sum of money, rupees 285-0-9, paid in by them to the collector's office as Government revenue for an estate called Bale Fooliah, of which the plaintiffs and defendants were joint proprietors, this sum being the amount of revenue due from the shares of the defendants.

The case was decreed by the moonsiff *exparte* in favor of the plaintiffs; and one of the defendants, on whom was allotted the sum of Company's rupees 110, appeals against this order.

On examining the records of the case, I find that the provisions laid down in Section 22, Regulation XXIII. 1814, were not acted up to. It is enjoined therein that the person through whom the notice may be served, shall certify the same on the back of the notice, and shall require some person or persons, being neighbours of the defendants, or a mundul or putwaree of the village in which the defendant may usually reside, to certify on the back of the process that, after diligent search, the defendant cannot be found; whereas the papers of the case contain no such certificate as that denoted above, and the appellant denies ever having received notice of the case, or of being made acquainted with it until the decree was about to be put into execution. Under these circumstances, I remand the case for re-trial, and order that the appellant should receive the amount of the appeal stamp.

THE 23RD JANUARY 1849.

Case No. 47 of 1847.

Regular Appeal from the decision of Moulvee Lutf Hossein Khan, First Principal Sudder Ameen, dated 15th June 1847.

Omachurn Deb Huldar, (Plaintiff,) Appellant,

versus

Gourmohun Roy and twenty-six others, (Defendants,) Respondents.

CLAIM laid at rupees 732-14, to obtain possession of a mouroosee izara, with mesne profits.

The plaint sets forth that Moheschunder Roy, husband of Sree Muttee Debbiah, made over in perpetual farming lease the 10½ annas share of a jumma of rupees 6-12, and the entire jumma of 4 rupees in the village of Pertab Katee, in pergunnah Mulickpore, to one Gungaram Nath, and that the heirs of Gungaram Nath, on his death, sold to the plaintiff his rights and interests therein, and that the plaintiff remained in possession since the 11th Asar 1245, the date of sale, and that in execution of a decree against Moheschunder his rights and interests in those two jummas were sold, and that they were purchased by Gourmohun, the defendant, who has ousted the plaintiff from his rights and possession of the property, and to recover these the case was instituted.

The defendant denies the existence of any arrangement regarding the perpetual farming lease, and states that the plaintiff has no claim on the property.

The principal sudder ameen dismisses the claim of the plaintiff, stating, as his reasons for so doing, that he puts no faith in the documents filed by the plaintiff, which he considers forgeries of recent date, and which were not mentioned by the plaintiff when he filed petitions of objections in the summary cases, in which the defendant

was the plaintiff in the collector's court, and in which the point of the perpetual farming lease was specially detailed, and it appears that the witnesses, who speak to the authenticity of the document of the perpetual farming lease, are men who resided in distant parts of the country to that in which the occurrence took place. The deed, moreover, is not registered, and the date of purchase of the paper on which it is written is three months prior to date of writing.

In the correctness of this judgment I agree, and, seeing no reason to interfere with the decision, I dismiss the appeal.

ZILLAH MIDNAPORE.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 4TH JANUARY 1849.

Case No. 271 of 1847.

Appeal from a decision of Nittanund Roy, late Town Moonsiff, passed on the 11*th of September* 1847.

Tara Persaud Dey, (Defendant,) Appellant,

versus

Saful Purdhan, (Plaintiff,) Respondent.

FROM the proceedings of the lower court it appears that the defendant (appellant) instituted a summary suit against the respondent, for a balance of rent on account of the year 1252 Umlee, and at the same time procured a warrant to be issued for his arrest. This warrant was returned unexecuted, and a proclamation was stated to have been left at the respondent's residence, calling upon him to attend at the deputy collector's court within fifteen days, and in consequence of his non-attendance the case was decided *exparte* by the deputy collector in favor of appellant. The respondent then instituted this suit to set aside the summary decision, and states that he was never made aware of the institution of the suit or of the issue of the notice, that he holds 5 beegahs, 15 cottahs, 3 pudkas of land under the appellant, the rent of which he has paid in full, and that the kubooleeut filed by appellant in the revenue court is a forgery, that it is recorded in that kubooleeut that, besides the 5 beegahs, 15 cottahs, 3 pudkas of land held by him, he has taken a lease of 2 beegahs, 5 cottahs, 3 pudkas of land formerly rented by Kalee Persaud Bossoo, whereas this land is held by him as a shikummee ryut of the said Kalee Persaud Bossoo, who possesses it as a kumdaree jote under the appellant, and that it is with the object of making him (respondent) pay the rent of this land to appellant that he instituted the summary suit and procured an *exparte* decree against him.

Kalee Persaud Bossoo also filed a petition to the same purport in the moonsiff's court, and, in support of his opposition of the appellant's claim for rent, put in copies of certain summary decrees passed in suits between himself and the appellant for the rents of this land.

The moonsiff considered the respondent's case was satisfactorily proved, and, on the grounds of the merits of the case before him, set aside the *exparte* decision passed by the deputy collector.

JUDGMENT.

This suit was instituted in the moonsiff's court to set aside an *exparte* decision of the revenue court, passed under Section 18, Regulation VIII. of 1819, the plaintiff (respondent) alleging that he neither owed the defendant (appellant) the arrears claimed, nor was he made aware of the institution of the suit against him. The moonsiff has set aside the *exparte* decision after a full enquiry into the merits of the case, on the grounds that the plaintiff (respondent) never owed the balance or gave the kubooleeut under which it is claimed. I am, however, of opinion, that the moonsiff exceeded his power in taking up the case on its merits, and that he could not enter upon the plaintiff's case, unless it had been submitted in the shape of his defence before the revenue court. As the decision now sought to be set aside was given *exparte*, it is only necessary to enquire whether the revenue court was justified or not in so deciding the appellant's claim, *i. e.* did the revenue court take such precautions as the law enjoins, for causing the attendance of the party sued before it, and was the non-attendance wilful on his part?

Clause 3, Section 18, of Regulation VIII. of 1819, enacts that if, after process of arrest has been taken out, the return of the nazir certify that after diligent search the party cannot be found, the plaintiff may either move the court to postpone the case for a month, or cause a proclamation to be made without any postponement, calling upon the defendant to appear in court, or that, after fifteen days, the court will pass judgment, *exparte*, upon the documents and proofs filed by the plaintiff. In this case the process of arrest and the proclamation were taken out together, and a return made by the nazir that the defendant could not be found, and a certificate from the ameen and mookhya of the village filed with it, reporting their having affixed the proclamation to the house of the defendant. At the expiration of the fifteen days the case was taken up and decided *exparte*. If the defendant now seeks to set aside that decision, it can only be done on proof that no notice was served, as stated by the parties concerned in making the return, or that the service was not made according to law. If this is proved, the *exparte* decision can be set aside, but if, on the contrary, it is shewn that the proclamation was legally made and executed, it follows that the deputy collector was justified in looking on the default of the defendant as wilful, and was bound to give a decision on the documents and proofs filed by the plaintiff; and that decision cannot be set aside on proofs subsequently brought forward by the defendant in the moonsiff's court. I therefore remand this case to the moonsiff, who will refile the suit, and be guided in its decision by the above remarks. The appellant will receive back the value of the stamp fees paid in this court.

The 9th January 1849.

Case No. 161 of 1848.

Appeal from a decision of the Principal Sudder Ameen, Mr. C. Mackay, passed on the 7th of July 1848.*

Kalee Persaud Mujoomdar and others, (Plaintiffs,) Appellants,

versus

Bindabun Sunkaree and others, (Defendants,) Respondents.

This suit was brought to recover possession of 4 beegahs 6 cottahs of land, which the plaintiffs said appertained to their talook of mouzah Panchrool, but of which they had been dispossessed by the defendants taking the rents from the ryuts since 1251 Umlee, under the plea of its being their rent-free land.

The defendants denied that this land had ever been mal land of mouzah Panchrool, as asserted by the plaintiff, and stated they held it under deeds of sale from the lakhirajdar and a party who had purchased part of it from him.

The collector reported it to be lakhiraj land, and the principal sudder ameen dismissed the suit on the ground that the land was rent-free.

The plaintiff appealed against this decision, urging that the lands held under the sunnud and endorsed on that document are distinct from those under dispute.

On perusing the record, I find that the plaintiffs have no proofs whatever that the land ever constituted a part of their talook. The papers filed by them are those prepared by themselves, and cannot be received in support of their case. The collector distinctly states that the land in dispute is recorded in his office as rent-free land of the sunnud under which the defendants' rights are now represented. I therefore see no reason to interfere with the decision of the lower court, and dismiss this appeal.

ZILLAH MOORSHEDABAD.

PRESENT: D. J. MONEY, ESQ., JUDGE.

THE 26TH JANUARY 1849.
No. 31 of 1844.
Regular Suit.
Munhurry Dassea, Plaintiff,
versus
Praunkissen Doss, and nineteen others, Defendants.

CLAIM, Company's rupees 99,915-6-17-3, for possession of 8 annas share of an estate in landed and other real and personal property.

Bejoy Kissen Doss, the plaintiff's husband, and Prankissen Doss, the defendant, were brothers and joint-holders of an estate which had descended to them by inheritance. On Bejoy Kissen's death, his wife, then a minor, demanded to be put in possession of 8 annas share of the whole property. This being refused, she was constrained to sue against the defendant to realise her claim.

Praunkissen Doss, Kissory Dossee, Raja Krishen Chund, Koonwur Ram Chund, and John and Robert Watson replied to the plaint. The rest did not appear; but while the suit was under trial, a razeenameh on the part of the plaintiff, and a supheenameh on that of the defendants, agreeing to its conditions, were filed by the respective parties on the 31st October 1848. Further proceeding was unnecessary, and a decree was given, directing the whole estate to be divided according to the terms of the mutual agreement of both parties. The plaintiff to have 4 annas share and the defendant 12 annas of the whole of the property. The costs to be paid by the parties in the same proportion.

THE 26TH JANUARY 1849.
No. 166 of 1848.
Regular Appeal from the decision of the late Moulvee Mahomed Mobeen, Moonsiff of Gowas, dated the 13th September 1848.

Joymonee Dassea, Theroo Bewa, Eedoo Shekh, Loha Shekh, Oomurdee Shekh, Sreeneebas Halder, and Sakee Dassee, (Defendants,) Appellants,
versus
Benuddee Lal Roy, (Plaintiff,) Respondent.

A SUIT was instituted by the plaintiff (respondent) on the 2nd December 1847.

Claim, 32 rupees, for value of 8 beegahs of a kollye crop, destroyed by the trespassing of defendants' (appellants') cows, calculated at the rate of 4 rupees per beegah.

The defendants (appellants) denied the trespass.

The moonsiff decreed for the plaintiff, but considering the claim of 32 rupees too much, and that the crop had been overvalued, he gave a decree for 20 rupees against the defendants (appellants,) at a value of 2 rupees, 8 annas per beegah.

The defendants (appellants) appealed chiefly on the ground that the moonsiff had relied on the evidence of witnesses, when he might have better ascertained the truth by local enquiry.

The plea of the defendants (appellants) is a good one. The grounds of the moonsiff's decision are insufficient. He did not sufficiently attend to the answers put in by the defendants (appellants.) The plaint was not clearly proved. The extent of damage was not ascertained. The crop was overvalued. The principal witness, who was witness on both sides, Bhagbut Chowkeedar, deposed that 1 beegah only was damaged, and that the value of the crop, which was a very poor one, was only 1 rupee 4 annas per beegah. It was not proved that the cows belonged to the defendants, and there were discrepancies in the evidence. In such a case a local investigation was necessary to elicit the truth. The appeal is therefore decreed, the moonsiff's decision reversed, and the case remanded for re-trial. Appellants to receive back the amount value of their stamp.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 4TH JANUARY 1849.

No. 18.

Appeal from the decision of Mr. Colin McDonald, late Sudder Ameen of Patna, passed on the 20th April 1847.

Radha Beebee, for herself and as guardian of her infant son, Luchmun Pershad, (Defendant,) Appellant,

versus

Gopee Nath, (Plaintiff,) Respondent.

SUIT laid at rupees 651-5-3, for the recovery of the principal and interest of a loan.

This suit was instituted against Doorgah, widow of Boolakee, deceased, and his mother Radha Beebee. Plaintiff alleged that Boolakee and Radha Beebee obtained a loan from him; and granted a tumussook zur-bhurna, by which they made a species of assignment of the rent accruing to them from the third share of mouzah Raneepore, and payable by Toolsheenath and Kasheenath, under a lease for five years from 1248 to 1252, for the payment of the interest, at the same time depositing with the plaintiff the kubooleeut, or agreement of the lessees; and that the lessees, in collusion with defendants, having withheld the rents and paid no part thereof, plaintiff was obliged to sue the said defendants. The annual rent of the lease amounted to Company's rupees 229-4, of which, according to the stipulations of the tumussook, 60 rupees was to be credited by plaintiff against his demand for the interest of the loan, amounting to 500. rupees, and the remainder rupees 169-4 to be paid by him to the defendants aforesaid. Radha Beebee answered that plaintiff had regularly received the rent, but had paid no part of it, as stipulated, to the borrowers; and that plaintiff, if he had not received the rent, should have sued the lessees as well as them. Kasheenath and Toolseenath, or Toolseeram, were subsequently included as defendants by supplementary plaint, and pleaded that they knew nothing of the agreement between plaintiff and the other defendants, but that they paid the rent of 1248 and 1249 to Radha Beebee, and for 1250 and 1251 to her and Boolakee, and for

1252 gave them credit for the advance, 225 rupees, which they had borrowed, and received credit for the rent of the year, according to the stipulations of the lease, and surrendered the said deed to them on the expiration of the term in that year. Doorgah, supporting the plea of Radha Beebee, replied that plaintiff had received the rent of the third share, and that she had herself paid 109 rupees towards it within a few months.

The sudder ameen adjudged the defendants, Radha Beebee and Doorgah Beebee, to pay the amount claimed, on the following grounds; first, the averment of the lessees that they did not pay the rent due under their deed of lease to plaintiff, is proof positive that they did not; second, that as there is no proof that they consented to pay the said rent to plaintiff, they are not liable to be called upon; third, that their plea of having paid the said rent regularly to the other defendants is not relevant to this case, and the truth or falsehood of it need not be determined in this case, particularly as there is a case pending in which these parties are the litigants, and in which this matter is under litigation.

The appellant urges that, unless she had recovered the rents assigned by the deed to the plaintiff, she could not be held liable to pay what plaintiff had agreed to receive from the lessees, and therefore it was unjust to decide this case previous to the other, which she had applied to have considered simultaneously, in which this very fact was to be determined.

I am clearly of opinion that the determination of the above point is necessary to a satisfactory decision in this case. For the matter between the parties clearly appears from the pleas to be this, whether plaintiff has been prevented by the acts of the appellant from recovering the annual rent from the lessees, defendants, or not, and the way in which it is alleged, viz. by the lessees, defendants, that she has done this, is by collecting the rent herself. Another important point for decision is, whether plaintiff has collected the rent or not, as pleaded by appellant. The disavowal of payment by the lessees, defendants, is not sufficient to determine this point. It is quite possible that payments, made through a third party, by them, may have reached the plaintiff, though intended for the other defendants, as pleaded by the appellant in the case of 70 rupees, alleged by her to have been paid through Gooroo Pershad. The sudder ameen has not noticed the proofs adduced either by Radha Beebee, or Doorgah Beebee, since deceased, of the payment of the rent to the plaintiff, and therefore his investigation is incomplete, both on this score and that of his not waiting for the determination of the cross suit, when he deemed the proof of plaintiff's having collected the money to have failed. The suit is therefore remanded to the court of the first principal sudder ameen, for re-trial with reference to the above remarks. The value of the stamp of the petition of appeal will be returned to the appellant.

THE 16TH JANUARY 1849.

No. 16.

Appeal from the decision of Moulvee Uhmud Buksh, Sudder Ameen, passed on the 26*th August* 1846.

Ramjewun Lall and Mitterjeet Singh, (Plaintiffs,) Appellants,

versus

Sheikh Doolun and others, (Defendants,) Respondents.

SUIT laid at 32 rupees, for possession on an 8 annas share of mouzah Meerapore, pergunnah Buleeah.

This case was dismissed, because the plaintiffs, after giving in their documents, had not taken the proper steps to bring their witnesses into court. The nazir had reported on the 6th August, that the subpœna had been duly served on six witnesses, whom the plaintiffs undertook to bring into court themselves. As they had not produced them on the 21st of August, when their vakeels reported Ramjeewun Lall out of his mind, and Mitterjeet Singh absent from his home, the sudder ameen gave them till the 24th August to obey his order, and, on their failure to do so, he dismissed the suit on the date abovementioned, *viz.*, 26th August. Ramjeewun having come into court and appearing now to be of sound mind, and declaring that he had duly appointed vakeels to conduct this appeal, the case was proceeded with. The appellants contend that their suit ought not to have been dismissed without a hearing on the merits until the lapse of six weeks without proceedings had made it liable to be dismissed under Act XXIX. of 1841, and I think rightly so, particularly as in the order it is not clearly stated to be a decision without adjudication on the merits in which case a new suit might be entertained, as in cases of dismissal under the Act quoted. I consider the investigation incomplete therefore. The heir or heirs of Mitterjeet Singh, appellant, said by the witnesses to be the other appellant solely, appear to have committed default in this court by not establishing the fact of his or their succession within six weeks after his demise. As, however, the plaintiffs have not sued severally each for any distinct part of the 8 annas share, the decision cannot be upheld as it affects one plaintiff, and reversed as it affects the other. I therefore reverse the decision, and remand the suit, to be re-tried on its merits in the court of the first principal sudder ameen, where the heir or heirs of Mitterjeet may be admitted to plead jointly with the other plaintiff. The value of the stamp of the petition of appeal will be returned.

THE 19TH JANUARY 1849.

No. 27 of 1841.

Appeal from the decision of Oosman Ali Khan, Sudder Ameen, passed on the 14th January 1841.

Ooma Dutt and Gouree Dutt, (Plaintiffs,) Appellants,

versus

Ram Sanahee Singh and Gopal Singh and others, (former Defendants,) and Ali Kureem and others, auction purchasers, Respondents.

SUIT, laid at Company's rupees 426-10-8, to confirm their possession as cultivators on certain lands in mouzah Burhona, and establish the proper amount of the rent payable.

In this case a judgment was passed in appeal, on the 18th December 1841, awarding to appellants possession upon the lands claimed by them as cultivators. As however there was no specification of boundaries, or other particulars by which the land could be identified, either in the plaint or in the award, it was found impossible to execute it. In the meanwhile a further difficulty arose in the alienation, by sale for recovery of revenue arrears, of the estate in which the lands are situated. Under these circumstances orders were passed by the Sudder Dewanny Adawlut, on the 28th March 1848, directing all proceedings in execution to be entirely put a stop to, unless the appellants should apply for a review of judgment. Accordingly appellants have applied for the review and for permission to file an amended plaint, stating the boundaries of the lands they claim to hold, and to include the sale purchasers among the defendants.

On a report of the circumstances a review has now been granted by the Sudder Dewanny Adawlut in their register's letter, dated 7th September last, to enable this court to decide judicially whether the plaintiffs should be nonsuited for omitting the insertion of boundaries or be permitted to proceed on an amended plaint.

It does not appear to me to be equitable to nonsuit the plaintiffs, after their appeal has been admitted, the respondents called upon to plead, and the suit adjudicated without any notice being taken by the court of the defect in the plaint. That defect could only have proceeded from ignorance, and much of the inconvenience and expense unnecessarily incurred is attributable as well to the omission of respondents to point out the defect as to the defect itself. For although, in the answer to the appeal, respondents object that the quantity and quality of the lands have not been specified, they do not notice the failure to state their boundaries or other means of identification. It ought to have been plain to the court of first instance, that no satisfactory decision could be arrived at without a specification of the lands, and it seems to me that it was competent to that court and even imperative upon it to question the plaintiffs

regarding the boundaries in order to the elucidation of their claim, and even to have given them the option of filing an amended plaint, previous to making a decision, which in default of such amended plaint should have been a nonsuit. A case in point was decided in the Sudder Dewanny Adawlut, on the 19th April 1819, *viz.*, Neel Kunt Ghose and others, appellants, *versus* Sassee Munnee Dassee and others, respondents. The plaintiffs having been nonsuited in the provincial court for not suing for the whole of their claim, it was ruled in the appeal that that court should have given the plaintiffs the option of paying the full fees and amending their plaint. In the spirit of this decision, I am of opinion that the plaintiffs in this case ought to be permitted to proceed on an amended plaint. This cannot be done in the appeal court, and if the regulations and practice of the courts would warrant it, the other circumstances of the case preclude such a course, for the sale purchasers must be heard as defendants. Under these circumstances, in supersession of the decree of this court now under review, I decree the appeal, and, reversing the decree of the sudder ameen in this case, remand the case to be tried *de novo* in the court of the first principal sudder ameen, who will admit within a reasonable time an amended plaint, specifying the boundaries of the land and naming as defendants the purchasers at the sale. Under the peculiar circumstances of this case, I adjudge both parties to pay their own costs.

THE 20TH JANUARY 1849.

No. 5.

Appeal from the decision of Mahomed Rafiq Khan, Second Principal Sudder Ameen, passed on the 12th December 1844.

Ramoo Rae, (Defendant,) Appellant,

versus

Gopee Chund, (after his decease, Muhadeo Lall,) Musst. Phoolkooer and Hurruk Lall, (Plaintiffs,) Respondents.

SUIT laid at 1,422-15-0 rupees, for the reversal of the sale of mouzah Russoolpore and Buhadoor, pergunnah Gyaspore.

The respondent, Hurruk Lall, was associated as a plaintiff in this case by an act of champerty clearly avowed in the plaint, for which reason the principal sudder ameen, in deciding in favor of the other plaintiffs, excluded him from the benefit of the decree. Both parties appealing, the appeal of the defendant was decreed by the judge, and the decree was reversed. Hurruk Lall did not join in a special appeal, which the other plaintiffs preferred to the Sudder Court. That Court having remanded the appeal suit to the city court, the judge, in deciding, omitted to notice the plea of the appellant contained in their original reasons for appealing, viz., that the plaintiffs should have been nonsuited on account of the act of cham-

perty, and, on their appealing specially, the Sudder Court again remanded the case to be tried *de novo* on this point. Hurruk Lall, now in his petition of the 13th April, intimated to the court, that the illegal agreement between him and the other plaintiffs had been cancelled after the first decision in appeal to the judge, by the repayment of the money 300 rupees, which he had advanced for the expenses of the suit; that the other plaintiffs got possession solely on the principal sudder ameen's decree being confirmed by the second decision of the city court; that he had withdrawn from all connection and concern in the case or the property, and now wished the case to be adjudicated in reference to the claims of the other plaintiffs alone. The other respondents pleaded this in bar of a nonsuit. Nevertheless in reference to the precedent in the case of Lootfoonnissa and others *versus* Mehroonnissa and others, decided in the Sudder Dewanny Adawlut, I decided on according no weight to this plea, and nonsuited the plaintiffs. These parties, with the exception of Hurruk Lall, then produced a precedent more exactly in point, and of a later date than the one above quoted, viz. that in the case of Beebee Emamun and others *versus* Beebee Nujoo and others, of the 14th June 1847, and on their application I reported to the Sudder Dewanny that, "if Hurruk Lall's withdrawal from the case was *bonâ fide*, the decision was contrary to a precedent, and therefore a review was requisite for the ends of justice." On the review being authorized, the appellants endeavour to shew that Hurruk Lall's withdrawal was not *bonâ fide* but fictitious, inasmuch as he continued to appear in person and by vakeel and to plead as a respondent long after the date of the alleged cancelment of the agreement; that the said agreement was not cancelled, nor the money advanced paid back; that a second agreement was executed in his favor in name of his infant son, Kaleeputh, containing the same illegal condition in consideration of his advancing a further sum for the expenses of the special appeal, and finally that, that not being considered sufficiently effectual, a third instrument had been executed in the form of a deed of sale of the 8 annas share of the estate in litigation for the sum of 12,000 rupees, to Rughoonath Sahae, whose interests were identical with Hurruk Lall's, bearing a date subsequent to that of the order in the Sudder Dewanny Adawlut, remanding the case for the second time; moreover, that Hurruk Lall had assumed joint possession of the estate when the decree was confirmed by the judge. The respondents deny the facts of Hurruk Lall's continued connection with the suit, urging that his appearance as a respondent, pursuant to notice, cannot be properly construed as maintaining his suit, which had been dismissed as well as his appeal; his concernment, or joint possession in the estate and his interest in it by virtue of the deed of sale to Rughoonath Sahae. They urge also that the second agreement, though witnessed and registered, was not carried into effect by reason of the non-pay-

ment by Hurruk Lall of the money stated in it to be paid. They bring forward four witnesses, who declare that Hurruk Lall in their presence was called on to pay 650 rupees, out of the sum stated in the second agreement to have been received from him, receiving credit for the sum of 300 rupees already paid by him according to the first agreement, making a payment by him of 950 rupees, but this he demurred to on the plea of want of funds, whereupon Muhadeo Lall and Gopee Nath, borrowing 300 rupees from the witness, Lala Chowdree, paid that amount to Hurruk Lall, and he surrendered the first agreement, with an endorsement signed and sealed by him, and the second agreement remained of no effect. Of these witnesses, Rughoobuns's name appears among the subscribing witnesses of both agreements, Hushmut Ali's of the second, Ram Lall's of the first. The certificate of registry on the second agreement shews that Hushmut Ali and the subscribing witnesses, among whom is the name of Rughoobuns, attended at the registry office and affirmed solemnly the due execution of the agreement. After having done so, very little credit can be given to what they state on solemn declaration.

On the other hand, after filing copy of the deed in favor of Rughoonath Sahae from the registry office, appellants produced five witnesses, to whose bold assertions I cannot accord any credit, two to prove under what circumstances that deed was executed and for what purpose, and three to prove Hurruk Lall's joint possession on the estate. They also filed copies of a power of attorney, executed by Kaleeputh and others in favor of Rughoonath Sahae, authorizing him to purchase estates, and of a proceeding of the collector shewing that he had purchased "Maise Boozoorg" for them. These documents were intended to shew that between Rughoonath and Hurruk Lall there was an identity of interests. Now, although it is not denied that Kaleeputh is an infant son of Hurruk Lall's, there is not sufficient evidence in the above to establish this identity; and even had this fact been established, it would not have availed the appellants much, because the mere sale of a claim *pendente lite*, it has been ruled in the Sudder Dewanny Adawlut, does not of itself constitute an act of champerty, *vide* case of Musst. Jysree Kowur *versus* Bhugwunt Narain Singh and others, decided November 24th 1847. If they wished to prove that the second agreement in favor of Kaleeputh, in consideration for an advance of rupees 950, was really concluded on the payment of the money, they should have called the subscribing witnesses, if they were forthcoming, or if not, have substantiated it by some other proof. It was for them to prove that Hurruk Lall continued to prosecute his claim after the date of his alleged relinquishment of it; and in this they have failed. I do not indeed give the least credit to the witnesses examined by the other side, but unless I have misconstrued it, the principle which appears to have guided the Sudder Court in its decision in cases of champerty is this, that the stipulations of such illegal contracts must

not be enforced by a judicial decision. This is avoided when the party advancing the costs withdraws from the position of a suitor in the case. In the present case, though it may possibly be still in the power of the other plaintiffs privately to deliver the reward stipulated, yet it cannot be awarded, or the consideration returned, by a decision of a court of justice,—the party in whose favor the deed or deeds were executed having declared them null, and relinquished his claim by petition to the court, previous to the final decision. Therefore, in supersession of the decision of this court, passed on the 8th May 1848, I dismiss the appeal, and confirm the decision of the principal sudder ameen. Costs payable, with interest to date of recovery, by appellant, with exception of any costs incurred by the respondent, Hurruk Lall, which he will himself bear.

THE 23RD JANUARY 1849.

No. 23.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 10*th June* 1847.

Jugunnath Suhae, (Plaintiff,) Appellant,

versus

Narain Dass, Mahadeo Lall, and Rung Lall, (Defendants,) Respondents.

SUIT laid at Company's Rupees 4,294-15-1, to recover the amount of an engagement, ikrarnamah, viz., rupees 2,600, with interest.

Appellant instituted this suit to recover the above amount upon an ikrarnamah, said to have been executed by Narain Dass in favor of Rung Lall, who transferred it to the plaintiff in lieu of payment of the amount of a decree obtained against him by the plaintiff. The plaintiff states that his decree amounted to rupees 4,294 and upwards, and that he compounded with Rung Lall for the amount by taking the ikrarnamah, and engaging to pay out of it the sum of rupees 1,806 8 annas to another creditor. The defendant Rung Lall admitted the above facts. The defendant Narain Dass, father to the defendant Mahadeo Lall, answered that he had never had any transactions with the defendant Rung Lall, which, he said, Rung Lall had admitted in his answer to the former suit, in which he (Narain Dass) had also been a defendant.

The principal sudder ameen pronounces the claim a fraudulent one, chiefly on the following grounds: first, the above answer of Rung Lall, a copy of which was filed by Narain Dass, defendant, in which he states that, not only does Narain Dass owe nothing to him or his late father, Thakoor Dass, but that he never had any transactions with him: secondly, the inconsistencies of divers of the witnesses with themselves at other times and in other places, and with one another, which

made it impossible to believe them or the other witnesses to the deed; thirdly, the stamp, on which the deed is engrossed, appears by the evidence of Radha Kishoon, the purchaser of it, to have been sold to Rung Lall, after the date which the deed bears. The principal sudder ameen rejects as inadmissible, because not stamped, the chitta of Thakoor Dass and Rung Lall, purporting to be signed by Mahadeo Lall, and considers it a forgery from its being evidently written with fresh ink; and he thus summarily dismisses the extract from the accounts of the late firm of Thakoor Dass and Rung Lall, filed by the latter to prove that the amount of the ikrarnamah appeared on the books as a balance against Mahadeo Lall—"the books of a defunct banking-house cannot of themselves be considered trustworthy."

I am quite unable to find any evidence of fraud on the plaintiff's part in this case, and it is difficult to imagine for what end he could have colluded with the defendant, Rung Lall. On the other hand, the documentary evidence of all the parties create the strongest impression of a series of collusions between the defendants, Rung Lall and Narain Dass, having for object to defraud the creditors of the former. Copy of petition presented in the case of Sham Singh, decree-holder, *versus* Thakoor Dass and Rung Lall, in March 1846, by Narain Dass, No. 76, filed on the proceedings by Rung Lall, defendant, states that the father and grandfather of the defendants and petitioner in the said case were in possession of certain property, in lands and houses, and, on the death of one of them, the property in houses was divided into two equal shares—and that on the death of the other, his son, Thakoor Dass, raised three several loans of rupees 12,000, 3,000, and 1,000, on mortgages of mouzah Muhumudpore Kooreea and his half share of two houses, granting three deeds of conditional sale to the petitioner, executed on the 15th and 16th of September 1841. Copies of two deeds relating to the houses have been filed by the parties, Nos. 52 and 78. By the copy of the principal sudder ameen's decision, (No. 37,) dated 19th December 1845, filed by Rung Lall, in which Telook Chunder was plaintiff *versus* Thakoor Dass and Narain Dass, defendants, it appears that the plaintiff, having obtained a decree against Thakoor Dass, attached and caused to be sold and purchased himself mouzah Muhummudpore Kooreea in execution, and, on proceeding to take possession, was opposed by Narain Dass, on the ground of his alleged mortgage of rupees 12,000. Telook Chunder consequently sued him for the annulment of the fraudulent deed. Narain Dass first defended the suit, but afterwards, compounding with the plaintiff for the payment of his costs, relinquished the estate, pretending that Thakoor Dass's son, Rung Lall, had given him security for the payment of the mortgage. From the roobukaree of the principal sudder ameen of 31st August 1846, it appears that Sham Singh, another decree-holder, having purchased one of the houses attached and sold as the property of Rung Lall, was similarly opposed by Narain

Dass, and was referred to a regular suit, which has been instituted to cancel a second document, asserted to be fraudulent and collusive. It is quite impossible, after these things, to award any weight in this case to the answer of Rung Lall in the suit which gave rise to it, for if judgment had been given against both him and his relative, Nund Lall, the latter, would have been unable to preserve any part of his property by a fraudulent deed of conditional sale, like that resorted to in the case of the decree-holder, Telook Chunder. Nund Lall's fraudulent conduct, in making this sort of answer, and then acknowledging its falsehood by offering the ikrarnamah to the plaintiff, is evident enough, but the plaintiff was the party over-reached, and it should not be thought unaccountable that Rung Lall should purchase the cessation of the proceedings in execution of one decree, at the cost of the institution of another suit, which might prevent the friendly aid of Narain Dass being again effectual. For as the mortgage in Telook Chunder's case is proved to have been fictitious, the other mortgages may prove equally so; besides the hope of getting quit of the appellant's first decree without paying a fraction of it, by means of a contested suit on the ikrarnamah, was not unreasonable, and was fulfilled as far as the court of the principal sudder ameen was concerned. Now, as to the evidence of the witnesses to the ikrarnamah, there are contradictions in the evidence of some of them as stated by the principal sudder ameen, but I do not see reason from that to reject, as unworthy of credit, the testimony of the others. Had those witnesses been open to a strong suspicion of having wilfully prevaricated, then indeed there would have been ground for suspecting all, including those whose statements are consistent enough, but it is quite possible for witnesses to make mistakes in regard to the circumstances under which a deed was executed, and even in the amount of it, and as to the witnesses who signed with them. In this case, the deed does not appear from the evidence to have been attested by all the witnesses at once, or at the time it was attested by the person executing it, and therefore such mistakes were more likely. I do not find any material contradiction in the evidence of Joorawun Singh and Bhookun Lall, and consider their evidence sufficient to prove the ikrarnamah. With regard to what is said, in the decision, of the deposition of Radha Kishoon, it must be observed that in the endorsement on the stamp his name is alone given, without parentage, or residence, or other means of identification. He is one witness and is flatly contradicted by several on the other side. In regard to the books of the late firm of Thakoor Doss and Rung Lall, it is objected on the part of the respondents that they were sought for in vain when ordered to be produced, in another suit, in which Rung Lall was defendant. This is proved, but though this might be a reason for rejecting them in any suit in which Rung Lall alone was concerned, it is not a proof that the books were not in existence, and could not be produced, and therefore cannot be allowed to deprive the plaintiff of

the benefit of them. As they had not been examined by the principal sudder ameen, they have been now inspected by the referee chosen by the parties for this purpose. He reports that they have every appearance of being genuine, and exhibits a balance of rupees 2,600 due by Mahadeo Lall, thus affording good corroborative evidence of the justice of Rung Lall's claim. I therefore reverse the decision of the principal sudder ameen, and decree the amount claimed, with costs in both courts, against Narain Dass and Mahadeo Lall, with interest to the date of payment.

THE 26TH JANUARY 1849.

No. 29.

Appeal from the decision of Mr. E. Da Costa, First Principal Sudder Ameen, passed on the 13*th July* 1847.

Abdool Subhan, (Plaintiff,) Appellant,

versus

Hookoom Chund, (Defendant,) Respondent.

SUIT laid at rupees 4-6-6, to recover arrears of ground-rent.

The plaint sets forth that, on the 1st Mohurrum 1259 H., or 1843 A. D., defendant, obtaining a lease of a piece of unoccupied ground, (oftadee zumeen,) built his house thereon, and lives in it without paying the rent stipulated in his surkhut, refusing to remove the materials of his house, which in the said surkhut he bound himself to do in the event of not paying the ground rent regularly. The defendant denied having granted the surkhut, and pleaded that the house he occupies, and the ground on which it stands, and for which plaintiff claims ground rent, are his hereditary property. The judgment of the principal sudder ameen is to the following effect: "The plaintiff has entirely failed to make out his case. The surkhut is not proved. It is evidently a suspicious document. There is no specification of the quantity of the ground, or of the boundaries of it. Besides, it is in evidence that the house is in the defendant's occupancy for twenty-five years: how then could he have given the surkhut and built the house in 1843?" For these reasons and the suit of defendant to establish his proprietary right having been decreed in his favor, the suit was dismissed. The appeal is founded on a statement of the tenure of the defendant, quite different from that given in the plaint. It is that defendant and his father had occupied from of old part of the land for which the surkhut was granted in 1843, the other part being that which had been recently relinquished by one Kashee Koormee, and this is the statement of plaintiff's witnesses examined at the trial; but this statement does not agree with the tenor of the surkhut which supports that of the plaint. The witnesses subscribing the surkhut, *i. e.* whose names were attached to it, cannot write, and their names, Bubur Alli says,

he attached to the document which he wrote for the defendant. Another ground of the appeal is, that rent was levied for the land then in the occupancy of defendant or his ancestor, on the part of a surbarakar when the land was under attachment, proof of which was given in the evidence of Wahid Ali, thesildar. On referring to this evidence the fact is not found to be proved as stated. With respect to a third plea, viz. that in the ledger of payments of chowkeedaree tax the plaintiff's name appears as landholder, that of defendant's only as occupant rent-payer,—that is not now admissible as it was not urged on the trial of the suit. The plaintiff, I think, has quite failed to establish his proprietary right or his right to recover rent and the execution of the surkhut, and I therefore dismiss the appeal with costs, and confirm the decision of the principal sudder ameen.

THE 27TH JANUARY 1849.

No. 30.

Appeal from the decision of Mr. E. Da Costa, First Principal Sudder Ameen, passed on the 13th July 1847.

Abdool Sobhan, (Defendant,) Appellant,

versus

Hookoom Chund, (Plaintiff,) Respondent.

APPELLANT had sued respondent in the moonsiff's court in May 1846, for the ground rent of the land on which his house stands. In the month of December following, respondent instituted this suit, in consequence, he said, of that false claim, in order to establish his right to the land, and he sued not only the defendant but Bhyro Lall, a vakeel of the moonsiff's court, whom in the plaint he designated as the instigator of the other defendant, appellant in this case. Appellant pleads, among other things, that respondent's object in making Bhyro Lall a defendant was the removal of the cause from the court of the moonsiff, who was about to decide it in the suit instituted by appellant in appellant's favor. Now as in the answer to that suit, the respondent had not mentioned Bhyro Lall's name as having instigated the claim, and as in the present suit he has taken no steps to prove any act of instigation on the part of Bhyro Lall, it is evident that his name was only introduced for the purpose of having this suit and that instituted by the appellant heard and decided in some other court. Both suits have consequently been heard in a jurisdiction to which they were transferred without any real ground, and the time of the principal sudder ameen's court has been needlessly occupied with causes of trivial importance, which ought to have been determined by a moonsiff. The trick is by no means uncommon in this city, and must be discountenanced. It appears to me a proper ground for a nonsuit, that the plaintiff has fraudu-

lently brought his action against a party, never intending to prosecute it against that party. The principal sudder ameen might have fined him for a frivolous and vexatious suit as it regarded the defendant Bhyroo Lall; but as he has omitted to do so, I have no other course but to nonsuit the respondent, which I accordingly do, charging him with all the costs in both courts.

THE 31ST JANUARY 1849.

No. 26.

Appeal from a decision of Mr. E. Da Costa, First Principal Sudder Ameen, passed on the 30th June 1847.

Choa Sahoo, (Defendant,) Appellant,

versus

Oomrao Sahoo, (Plaintiff,) Respondent.

SUIT laid at rupees 1,398-6-9, to recover the amount value, with interest, of goods seized and sold in satisfaction of a debt, of which defendant afterwards recovered payment a second time under a decree of court.

The facts of this case are as follows. It is gathered as well from the pleadings as from an award of arbitrators, that this dispute, being referred to arbitration by the parties at the suggestion of the commissariat officer at Dinapore, was decided in this way: that as Oomrao's relative, Puchkoree, had deposited the goods with Choa Sahoo as security, jakhur, for his claim, Oomrao should pay the said claim, amounting by the award to rupees 505, and receive back his goods. This the award states that he consented to do. In his petition, however, to the commissariat officer, of the 26th July 1843, the date of the award, he objected to it chiefly on the ground that the goods had been sold by the opposite party, and therefore the arbitrators ought to have awarded the value of them. In September 1844, Choa Sahoo instituted a suit for the money awarded by the arbitrators, and in reply to his plaint Oomrao pleaded that a much larger sum was due to him on account of the goods, in proof of which he appealed to the arbitrators' award. Choa Sahoo obtained a decree for the amount, but execution was delayed by the terms of the decision until he should surrender the goods. In May 1845, he applied for permission to deliver up the goods in court on account of the refusal of the opposite party to receive them, and for execution of the decree; but the goods were not produced, perhaps owing to delay in passing orders on the motion, till the following September, and they were then in a decayed state. Execution was refused by the order of the principal sudder ameen of the 2nd September, but the city judge in appeal remanded the case for enquiry into two points, viz. whether the goods were really those of Oomrao, which had

been deposited with Choa Sahoo, and, if they were, whether Oomrao unwarrantably or wickedly had refused to accept them. These two points being decided in the affirmative, execution of the decree was granted. The plaintiff now pleads that the goods were seized by the defendant, and that they were sold by him long before the award of the arbitrators. The defendant pleads that he has never refused to deliver, but plaintiff, knowing that his debt to defendant amounted to more than the value of his goods, invariably refused to receive them, he urges that, the matter having been decided in the course of execution of the decree, plaintiff's suit is barred by Construction No. 1129 and Regulation III. of 1793, Section 16, and this is the chief ground upon which he now appeals from the decision of the principal sudder ameen, decreeing the value of the goods at certain rates. In this decree the above Construction is considered not to be applicable to this suit; but I think, if the plaintiff's plea be borne in mind, its applicability must be evident. It became necessary in order to carry out the intentions of Choa Sahoo's decree, to enquire whether the goods, which plaintiff now pleads had been sold previous to June 1843, by the said Choa Sahoo, had been delivered into court by him in September 1845 or not, and whether the present plaintiff had wrongfully refused to take possession of them. He could not have wrongfully refused to receive them, if Choa Sahoo had already disposed of them by sale, so that it has been decided in a process necessary to carry out the intentions of the decree, that Choa Sahoo had not sold the goods. The principal sudder ameen, executing that decree, however, has embarrassed the question by referring the present plaintiff to a regular suit for his remedy in the order alluded to. I will therefore consider the case on its merits. The proof adduced by the plaintiff, to establish the forcible detention and sale of the goods, is contained in the evidence of five witnesses, who can neither read nor write, and are all inhabitants of Patna, but who, nevertheless, swear positively, in reply to leading questions suggestive of the desired answer, that they were at Hazareebaugh, where the goods, having been forcibly detained by Choa Sahoo's people at Sheehurghatee, were brought to his gomashta at the first mentioned place, and that they were present when his order came for the sale; and when the gomashtah did accordingly sell those goods, they described what goods they were, though one did not know what tea was, whether it was a berry, or a leaf, or a fruit. I cannot believe their statements, and must think the plaintiff's case has failed. I do not find that the principal sudder ameen has placed any faith in the evidence of these witnesses either. His reasons for decreeing are these—"The order of the Dinapore commissariat officer, recorded on plaintiff's petition of 26th July 1843, clearly shews that he was considered entitled to the payment of the value of his goods, according to the Hazareebaugh price current. As the plaintiff has been deprived of the profits, which he

would have derived by the sale of his goods, had not defendant seized and taken them away forcibly, and besides the goods not being in their original good state, I am also of opinion that the plaintiff is entitled to the price thereof." In this decision the decree is given on a ground quite different from that on which the suit is instituted; and what the commissariat officer thought of the claim is entitled to no more weight than the opinion of any private person. The arbitrators had been appointed to decide it by the parties, and their opinion, of much more consequence therefore, was different. Neither does their award warrant the principal sudder ameen in pronouncing that the goods were forcibly seized. Being of opinion that the plaintiff has failed to make out his case, I decree the appeal with costs and interest to day of payment. The decree of the principal sudder ameen is reversed, the suit dismissed, costs payable with interest to day of payment.

THE 31ST JANUARY 1849.

No. 33.

Appeal from the decision of Mr. E. Da Costa, First Principal Sudder Ameen, passed on the 13th August 1847.

Seetul Purshad, (Plaintiff,) Appellant,

versus

Ghunsam Sahoo and others, (Defendants,) Respondents.

THE plaintiff, alleging that he had advanced to Ghunsam, respondent, a loan of Sicca rupees 851, in consideration of which that respondent had granted him a farming lease of the estate in question, and that the latter had ejected him from it before the expiration of the term (seven years) and without payment of his advance, sued to recover the balance of the said advance and the profits of the farm for the portion of the term yet unexpired. The respondent aforesaid pleaded that there was an arrear of rent due to him at the end of the fourth year of the lease, which, with interest, amounted to more than the principal sum advanced; and that, on a settlement of accounts, the appellant threw up the lease, from the beginning of 1251 Fuslee, the fifth year, signing an isteefa. Although it may be doubted that this isteefa is genuine, from the circumstance of the deed of lease remaining in the hands of the plaintiff, who filed it on the proceedings, yet I quite agree with the principal sudder ameen in his view of the evidence adduced by the plaintiff to establish his assertion that the rent was regularly paid. This was done, he says, in the following way; part was paid into the treasury, for which he adduced dakhilas, all admitted by the defendant, amounting in the aggregate to 1,206 rupees; part was paid by annual credit, which defendant by letter promised to grant him on account of the rent payable by a cultivator, the defendant named Nirmul, from whom plaintiff, in consequence of the letter, refrained from collecting any thing in every one of

the four years; and a further part was paid under his receipts to defendant Ghunsam himself. The sums covered by these several vouchers in each of the four years are as follow :

	1247	1248	1249	1250	Total.
Collectorate dakhilas,...............	352	352	229	273	1206
Ghunsam's receipts, ...	65	75	125	139	404
Credit for Nirmul's rent,............	147	52	59	58	316
Total,...	564	479	413	470	1926

The rent of the farm amounted, with batta on Sicca rupees, to rupees 481 only so that, if the vouchers are true, plaintiff paid too much in the first year of the lease by rupees 83, and for this surplus he did not take credit till the third year, in which, by the above account, there would appear a balance of rupees 68. For this surplus payment no reason is alleged. Besides the handwriting and signatures of the letter and receipts are not proved as they ought to be by evidence, and it does not appear that plaintiff took any steps to ascertain from Ghunsam defendant, whether he had really written the letter authorising the credit to Nirmul, that he gave him notice annually of the amount of the rent due by him, Nirmul, or obtained from Ghunsam any receipt or other voucher of its receipt or credit in the account. The putwaree has testified to the boojhota, or account of Nirmul's rent, but it was never shewn to Ghunsam. The very natural question, why Ghunsam consented to allow this credit, is not answered. If Ghunsam had been in the habit of himself collecting the money for Nirmul, surely proof of the fact would not have been difficult, but it is not even alleged as a fact. Of the total amount, rupees 1,206, covered by the collectorate dakhilas, the principal sudder ameen has allowed credit in the account only for rupees 1,074, and the appellant urges that the dakhila for rupees 132, having been acknowledged to be genuine, and being in his possession, should be received as proof that he, and not the defendant, paid the amount into the treasury. It appears, however, from the dakhila itself, that the amount was paid in by Moteeram, agent to defendant; and when it was customary for both plaintiff and defendant to make payments of revenue as it evidently was, it is incumbent on the plaintiff to give some further proof beside the possession of the document of the amount having come from him, that is, having been paid as he says to Moteeram by him. The witness, Moteeram, declares that he paid the amount, having received it from his master and received no dakhila. Thus the evidence of a balance being due on account of the loan having failed, I see no reason to interfere with the judgment of the principal sudder ameen, who appears to me to be quite right in his view of the precedent quoted by him. I therefore dismiss the appeal, and confirm the principal sudder ameen's decision, dismissing the suit of the plaintiff with costs, without serving notice upon the respondent.

THE 31ST JANUARY 1849.

No. 32.

Appeal from a decision of Mr. E. DaCosta, First Principal Sudder Ameen, passed on the 13*th August* 1847.

Seetul Pershad, (Defendant,) Appellant,

versus

Ghunsam Sahoo, (Plaintiff,) Respondent.

THIS was a suit instituted by one of the defendants in the suit the subject of appeal No. 33, just decided, with the object of declaring the deed of lease granted to the appellant, as set forth in the pleadings in that case, null and void from the date of re-payment of the advance from the rent of the farm, and the consequent resignation of the farm by the defendant. The decision in the other appeal having been affirmed, the decree in this case must be affirmed likewise, as the natural consequence of the premises established in that case. I therefore dismiss the appeal, and affirm the decision without summoning the respondent.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, ESQ., JUDGE.

THE 2ND JANUARY 1849.

No. 79 of 1848.

Appeal from the decision of the late Moonshee Chytun Churrun Das, Moonsiff of Lushkerpoor, dated 22nd March 1848.

Sheik Khoaj Mahomed, Appellant,

versus

Oodhubram Pal, Respondent.

RESPONDENT sued under a bond, which he declared appellant, his surberakar, to have executed on account of the balance of collections made by him in 1248 B. S.

Appellant denied execution of the bond, and alleged that he was illiterate, and was merely appointed, in consequence of his being an influential ryut, to assist Nehal Chand, the surberakar; and he assigned, as the cause of suit, that he had not attended respondent when summoned by him to do so.

The moonsiff (Moonshee Chytun Churrun Das) held execution of the bond proved by the subscribing witnesses to it, and the circumstance of appellant having acted as surberakar shewn, contrarily to his own statement, by his own witnesses; and he decreed the claim in respondent's favor.

Appellant now urges that he was a mere assistant to Nehal Chand, the surberakar, and did not collect himself; and that it is no matter of difficulty with respondent to cause attestation of papers by the people under his influence.

JUDGMENT.

Appellant's denial of having acted as surberakar having been falsified by his own witnesses, and no sufficient ground for a false suit having been shewn, I concur with the moonsiff in deeming the transaction declared by respondent proved.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 2ND JANUARY 1849.

No. 88 of 1848.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 29th March 1848.

Gourram Dhur, Appellant,

versus

Bholaram Das, Respondent.

RESPONDENT sued for rupees 30, damages, in consequence of having been assaulted by appellant, on account of a quarrel between his (respondent's) child and the child of Harroo Ram Dhur, a relative of appellant.

Appellant admitted the dispute between the children, and alleged that, on respondent's meeting him in the bazar, respondent had accused him of having encouraged Harroo Dhur's child to abuse his boy, and abused him on his denying it; and that he was about to sue, but was forestalled by this suit, instituted under the bad advice of others.

The moonsiff (Baboo Hergouree Bose) held the assault, in the manner declared by respondent, proved by his witnesses, and decreed rupees 8, as damages, against appellant, with costs in proportion, &c.

Appellant now urges that respondent's witnesses are interested persons; that there are discrepancies in their evidence, while the testimony of *his* witnesses is without a flaw; and that there is no proof of the amount of damage done.

JUDGMENT.

Appellant's vakeel, on being questioned by me, admits that no suit has been to this time instituted by his client; and, holding the assault declared by respondent fully proved by the evidence, corroborated by the circumstances of the case, and the damages awarded not excessive,

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 4TH JANUARY 1849.

No. 58 of 1848.

Appeal from the decision of Mahomed Moazum, Moonsiff of Nubbeegunge, dated 12th February 1848.

Gunnye Shah, Appellant,

versus

Lukhye Chung, Respondent.

RESPONDENT sued for 21 rupees, 2 annas, 1 pie, the price of pepper with interest, stating that appellant purchased in the month of Bhadoon 1253, 4 maunds, 35 seers of pepper from him, at 4 rupees per

maund, for 19 rupees, 8 annas, and received it in conjunction with his brother, Deboo Shah *alias* Debeeram Shah, both stating that it should be paid for next day, which promise was not fulfilled, and that the amleh of Brijgobind Chowdree, respondent's landlord, sent for them, when they admitted the debt: and he added that as he did not remember the date of the month Bhadoon, on which the transaction took place, he had calculated the interest from the commencement of Asin.

Appellant resisted the claim, and alleged that respondent came to his ghat, on the 3rd Asin 1253, and offered pepper for sale; that the price was fixed at 3 rupees, 14 annas, 15 gundahs, and the quantity found on weighing to be 4 maunds, 35 seers; that respondent retained 2½ seers for his own use, and transferred the remainder, 4 maunds 32½ seers, to him (appellant,) who obtained remission 19 gundas, and paid the remainder of the price, *i. e.* 18 rupees 13 annas, which respondent certainly would not have left outstanding without a bond; that respondent is the hereditary slave of him and his brother; that they would not manumit him, receiving the price of his freedom, as Brijgobind Chowdree wished them to do, and therefore Brijgobind took respondent to his own estate, and fraudulently caused this suit.

The moonsiff (Moonshee Mahomed Moazum) held the purchase by appellant, as declared by respondent, proved by the witnesses of the latter. He deemed the evidence of the two witnesses adduced by appellant unworthy of credit, because it was not likely, since the promulgation of Act V. 1843, that any one would pay money for his freedom, while it was, on the contrary, probable that the price of the pepper had been withheld because respondent had quitted appellant's estate, and for other reasons, and he decreed the claim against appellant.

Appellant now urges that the evidence brought by respondent is that of interested persons; that his own witnesses had made discrepancies in their evidence under the influence of Brijgobind Chowdree; and that, had the remainder of his witnesses been examined, the case would have been cleared up.

JUDGMENT.

Appellant's own witnesses have denied that other witnesses were present as appellant asserts, and I must take their evidence as conclusive on this point, and decide on the evidence before me and the probabilities of the case; and concurring with the moonsiff in thinking it very improbable that any one would now pay for the name of freedom, when all the advantages of freedom are secured by law, and finding that there are discrepancies in the evidence of appellant's witnesses, I hold the claim against appellant fully established.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

The 9th January 1849.

No. 1 of 1847.

Appeal from the decision of Rhadagovind Shome, late Principal Sudder Ameen, dated 28th November 1847.

Sheik Roosmut Oolah and Humeed Oolah, Appellants,

versus

Musst. Soodun Beebee, widow of Syud Mahomed Moazum, Respondent.

Respondent sued for possession, with mesne profits, of 11 koolbas 4 kears of land, as appertaining to her rent-free *nankar* tenure, in the name of Shah Gudda Hussun, in mouzah Suttung of pergunnah Gudda Hussun Nuggur.

She stated that her late husband, Mahomed Moazum, Mahomed Mokurrum, and Mahomed Uzeem, three brothers, sons of Mahomed Ukrum, were formerly proprietors of it; that her husband gave her his share and died; that after the death of her late husband's brothers, Subboo Banoo, daughter of Mahomed Uzeem, sold her paternal share to respondent on the 29th Jyt 1231, as did Abchand Beebee, widow of Mahomed Mokurrum, her marital share, on the 10th of Magh 1236, thus making respondent owner of the whole of mouzah Suttung, of which she had possession, partly with kubooleuts (or written engagements to pay rent) and partly without them; and that the ryuts and their heirs (*i. e.* appellants and others) withheld the rent of it from 1242 B. S., dispossessing respondent: and she added that the suit to recover her land (No. 1027,) instituted on the 22nd December 1837, dismissed by the principal sudder ameen, decreed in her favor, in accordance with a local investigation by Ramgobind Mujmooadar, by the officiating judge, was remanded by the Sudder Dewanny Adawlut for the investigation prescribed by Section 30, Regulation II. 1819, and was finally struck off the file on default of respondent, on the 22nd November 1842; that the land is in truth *nankar*, as is shewn by old decrees, but that Sri Chunder, the putwaree's mohurrir, without respondent's cognizance at the time, and from some fraudulent motive, recorded it as *muddudmaush* in the name of Shah Gudda Hussun, but as the property of Mahomed Moazum and others, in the register rendered by him to the collector in 1228: and she stated, moreover, mouzah Suttung and mouzah kismut Suttung to be one and the same mouzah.

Humeed Oolah answered, pleading that respondent had not specified whence the *nankar* came, or to what talooka the land in suit appertained; that neither respondent nor her ancestors ever interfered with it; that in truth it is assessed land belonging to two mouzahs, *i. e.* 4 koolbas 5 kears of it, the *jungulbooree* property of this defendant and his partners, to mouzah Badee Suttung, as per partition of Futteh Mahomed, ameen, and 10 koolbas 8 kears, the *jungulbooree*

property of Kuleem Oolah, Roosmut Oolah, and others, to mouzah Suttung, making together 14 koolbas, 8 kears of land, appertaining to talooka Abool Hussun, No. 1 of the said pergunnah; that, in accordance with a deed of agreement, signed by Kummer-ool-Hussun, grandson of Abool Hussun, the zemindar, in favor of Mahomed Unsur, Ryaz Oolah, and others, the land situated in mouzah Badee Suttung has been registered, with a jumma of 18 kahawuns 6 puns of cowrees, in the names of Ryaz Oolah and others, partners of this defendant; that respondent's mention of kubooleeuts is untrue; that respondent attached the property of Kuleem Oolah, and of the father of Roosmut Oolah and others, under claim of rent for 1235; but that their suit in replevin was decided in their favor, and their property released; that the local investigation made by Ramgobind Mujmooadar was conducted with partiality; that mouzah Suttung and mouzah kismut Suttung are separate mouzahs; that the ameen deputed to measure the *muddudmaush* land in kismut Suttung, mentioned by respondent, recorded it as in the possession of Nujum-ool-Hussun and others, with whom it has been accordingly settled, the said ameen never interfering with the land of this defendant in mouzah Badee Suttung; that respondent, who, in the former suit, described the land as *nankar*, brought forward witnesses, but that his statement was found by the collector to be without foundation, and the suit was consequently dismissed; and that the present suit is at variance with that former, with false boundaries specified in the plaint.

Sheikh Kuleem Oolah and Sheikh Roosmut Oolah (appellants) filed an answer in conformity with that of Humeed Oolah, claiming 10 koolbas 3 kears of the land in suit as their property in mouzah Suttung, and noticing that respondent's summary claim for rent, under which the property of Sheik Kuleem Oolah and the father of Roosmut Oolah and others was attached, was set aside in a suit for replevin, which shews that respondent never had possession.

Mahomed Usur filed an answer supporting the others.

Respondent filed a reply supporting his plaint.

The late principal sudder ameen (Radhagobind Shome) noticed, in his decree, that the question at issue was, whether the land in suit was respondent's *nankar*, or appellants' assessed *jungulbooree* land, and he observed that though the collector, in his opinion, under Regulation II. of 1819, deemed the land mentioned in the decrees filed by respondent unconnected with the land in suit, on account of there being no boundaries specified in those decrees, still the evidence, documentary and oral, left no doubt that it was *nankar*; that the said decrees had been for a long time conclusive and final; that the mention of *muddudmaush* in the *jungulbooree* grant, more ancient than the decennial settlement, which had been filed by defendants, told in favor of respondent's claim, and that the collector's opinion that the land, held on an invalid rent-free tenure, is assessed land, *towfeer* of talooka No. 1, merely because mouzahs Suttung,

kismut Suttung, and badee Suttung are not recorded as belonging to talooka No. 1, was unsatisfactory; that from the enquiries conducted by Ramgobind Mujmooadar, who was agreed to as an ameen by the parties, by Bhyrub Chunder, a mohurrir of the deputy collector, and by the deputy collector himself, it is clear that mouzahs Suttung and kismut Suttung are identical; and, there being no mention of the three mouzahs, mouzahs Suttung, kismut Suttung, and badee Suttung, in the mouzahwaree papers of talooka No. 1, the collector, in relying on the ikrar (agreement) written by Kummer-ool-Hussun, and on the circumstance that a small portion of land of mouzah badee Suttung had been recorded separately in the register of mutations, and its revenue paid by appellants, as shewing that the land was not *nankar* but the property of appellants, had proceeded on grounds of guess, which could not be approved by a court of justice, seeing that, on the part of respondent, her deeds of purchase had been filed to prove her purchase, and mouzah kismut Suttung is recorded in the lakhiraj mouzahwaree papers as *muddudmaush* in the name of respondent and others, and the term *muddudmaush* is used in the *jungulbooree* grant filed by appellants, and former judicial officers have recognized the *nankar* tenure, and the fiscal functionaries are not empowered to act in contravention of those decisions. And he further observed that respondent's claim was held proved by the investigation of the ameen, agreed to by the parties, and of the deputy collector; that kubooleeuts (or engagements to pay rent), purporting to be signed by some of the persons sued, have been filed by respondent, and there are ikrarnamahs filed by appellants to shew the jumma to have been *kharij* (separated) from talooka Abool Hussun No. 1, but respondent does not claim the land of the said talooka, and the kubooleeuts bearing the names of some of the persons sued, filed to shew them to be tenants, are on a par with these ikrarnamahs, which are filed in the former suit: and after noticing that the amount of mesne profits claimed was not disputed, he declared the land in suit to be *nankar* (open to assessment) and decreed in respondent's favor.

Appellants now urge that respondent has produced no rent-free grant, and that her suit is at variance with the records of the collectorate; that the pleas of the defence are established; that appellants and others first paid the revenue of mouzahs Suttung and badee Suttung to the zemindar, and have since, with his consent, caused part to be separated and registered as their own, paying the revenue directly to the collector; that old tanks dug by their inheritees, are in existence, tests of their *jungulbooree* tenure; that after pergunnah Lushkerpoor, &c., were separated from zillah Dacca and annexed to this district, mouzahwaree lists were filed in the collectorate, and afterwards similar papers were filed by the putwarees in 1228, and, had it been true, there would have been mention of the *nankar* in those old papers; that the registration in the registry of mutations had taken place more than twelve years ago;

and that had respondent any claim to the land at the time of registration she would have preferred it then; that respondent cannot have the land and appellants have to pay its revenue; that respondent's people wanted the lakhiraj ameen to measure the land as hers, but, on appellants' objection, and after taking proof, he refrained from interference in it; that the special deputy collector, on the 4th December 1838, after enquiry and deliberation, formally exempted the land from assessment, as is clear from the record of the former suit, and thus the land cannot be pronounced *nankar;* that the collector's opinion in such a case is conclusive; that the principal sudder ameen, adhering to the conclusion found by Ramgobind, the ameen, Bhyrub Chunder, the deputy collector's mohurrir, and Ramgutty Mitter, the deputy collector, which rest on the deposition of three or four false witnesses, had held assessed land to be rent-free, contrarily to the opinion of the collector; that the *muddudmaush* mentioned in the old *jungulbooree* sunnud filed by appellants appertains to no recognized tenure, but, as was customary before the decennial settlement, the land was recorded as *muddudmaush, i. e.* for the support of the zemindar, appertaining to turruf Abool Hussun; that of the two suits mentioned by the principal sudder ameen, one of them, instituted by Ryaz Oolah, ancestor of Humeed Oolah, appellant, and others, to recover excess of rent realized, was dismissed from want of proof, but shews the claim of respondent to have been for rent only,—and the other, instituted by respondent's husband against Madhoo Lushkur, a fictitious name, for possession of 2 kears of *nankar* land without boundaries, is fraudulent, and no possession was ever given under the decree passed in it to respondent or her husband; that possession should not have been ordered, by the principal sudder ameen, of land, of which no possession has been held for so great a length of time; that, in her former suit respondent fraudulently sued Gopal Kishun Mujmooadar, the nephew of Ramgobind, the ameen, as colluding with appellants, and that Gopal Kishun thus persuaded defendant's vakeel to agree to Ramgobind as an ameen, and thereby obtained a report on the case concordant with his wishes, but that the decisions founded on it had been set aside by the Sudder; that the collector's records, and the deeds of sale filed by respondent, exhibit the latter *nankar* in mouzah Suttung, and the former *muddudmaush* in mouzah kismut Suttung; that mouzah Suttung, mouzah kismut Suttung, and mouzah badee Suttung are three distinct mouzahs, and should not be confounded as one; that the *ferd tukseem,* or record of the partition, made by Futteh Mahomed is extant, shewing that the land in suit belongs to talooka No. 1, in mouzah Suttung, &c.; that the kubooleeuts filed by respondent bear neither appellants' signatures nor those of their ancestors, nor of any cultivator of the land, nor have they been attested, but exhibit the names of persons who have migrated to some other place; that the deputy collector has released land as *muddud-*

maush appertaining to the talooka, and situated in mouzah Suttung, on the claim of Mahomed Uzeem; and that Construction No. 1245, makes decision of the case dependent on the collector's opinion.

Respondent has filed an answer to the foregoing petition of appeal, in which she urges that appellant, having caused a portion of the revenue to be registered separately in the register of mutations cannot have destroyed her rights; that the digging of tanks by appellants' ancestors, ryuts, cannot lessen the rights of the landlord; that the land has not been exempted from assessment by the special deputy collector; that the decree obtained by her husband against appellants' ancestors is for 2 kears of *nankar* land; that appellants do not allege the *nankar* lands to be in any other place than that to which it is assigned by respondent,—with other immaterial matter.

JUDGMENT.

The question at issue between the parties is, whether the land in suit is *nankar*, or part of the *assessed land* of talooka Abool Hussun?

The reference prescribed by Section 30, Regulation II. of 1819, was made to the collector, who delegated the enquiry into the matter to the deputy collector, and the latter deputed Bhyrub Chunder Kur, one of his mohurrirs, to ascertain, by local investigation, whether the land was assessed or unassessed; and this last functionary made a return, dated 11th July 1845, setting forth that it was proved, by the evidence, documentary and oral, to be the *nankar* property of respondent, from which she had been disseized about ten or eleven years, and he added that the evidence of the witnesses adduced by the parties and the testimony of several persons resident in the neighbourhood, unnamed by them, proved that mouzahs Suttung, badee Suttung, and kismut Suttung were the names of the same village.

The deputy collector, Baboo Ramgutty Rai, reported (18th July 1845) in accordance with this investigation, that the land in suit was respondent's *nankar* land, liable to assessment.

Appellants, however, interposed a petition, objecting to the enquiry made by the deputy collector's mohurrir, on the score of partiality, and the collector ordered the deputy collector to investigate the matter in person. This was done, and the deputy collector again reported the land to be respondent's *nankar* property; but the collector dissented from his opinion, principally on account of a verbal answer given to him by respondent's mooktear, which will be duly noticed, and directed that the land should be released from assessment, subsequently explaining in his proceedings of the 2nd instant that his order was meant to stay the proceedings of the deputy collector, and not to be a judicial determination of the question which was under adjudication by this court.

Appellants urge that the collector's opinion is, under Construction No. 1245, conclusive and binding on this court, but the Construction

cited, does not warrant this view of it, and forms no bar to a decision by me on the merits of the case. Nor is the statement of Rameshur Surmah, respondent's mooktear, (see the collector's proceedings of the 17th November 1846,) that the special deputy collector had excepted the land from assessment as being already assessed, conclusive; for, in the first place, though the admissions of a mooktear are generally binding on his principal, *if within the scope of his authority*, the mooktearnamah has not been found registered in this court, or forthcoming from the collector's office, and I am unable to pronounce the admission, the validity of which thus depends on the terms of the mooktearnamah, to be binding on respondent; secondly I think such an admission ought not to be held binding when in conflict with the record, as this admission is, seeing that no order, by the special deputy collector, of the nature stated, can be found, and the presumption is that, had such an order been passed, it would have been forthcoming, and I may add to this, that it is also improbable that such an order was passed, as it was usual with the special deputy collector to leave questions, relating to the boundaries of the tenements resumed by him, for the determination of the officers entrusted with their assessment.

I am then apparently unprevented by any bar, and free to dispose of the case on full consideration of its merits.

Appellants have adduced two documents, apparently of great antiquity. The one purports to be a copy of the *ferd tukseem* of Futteh Mahomed, ameen, representing a transaction which, according to appellants' statement before Baboo Ramgutty Rai, the deputy collector, occurred in 1102 B. S., *i. e.* about a century and a half ago; and the other a *jungulbooree* sunnud, dated in 1125 B. S., about twenty years later than the former document.

These documents appear to me to afford no support to appellants' cause. The former merely records the name of badee Suttung, and, underneath, that of Nuzzer Mahomed, with the *syak* number 13 (kears) and a jumma of 2 kawuns 10 puns of cowrees, while the latter sets forth that mouzah Suttung contains 2 dhoons and 3 kears of *muddudmaush* land, the property of the grantor and the hereditary *jungulbooree* tenement of the grantee, and it inhibits the grantor from taking a larger rent than 23 kawuns of cowrees, and from opposing separation in case of oppression on the part of him on his co-sharers.

Supposing that there were particulars in the paper purporting to be by Futteh Mahomed, determining that the proprietary right in the land in suit claimed by Humeed Oolah and others, was originally vested in their ancestor, knowing the uncertainty and vicissitudes of tenure which must have prevailed previously to the decennial settlement, it would be absurd to look on that document as proving that the land claimed by Humeed Oolah now belongs to him. The same objection, *i. e.* of lapse of time and uncertainty, applies to the *jungulbooree* sunnud, which I may observe is wholly unauthenticated, and which is subject to strong suspicion; for, first, it appears to have been granted,

without consideration, to the detriment of the grantor, the grantee being allowed to dispossess him of the land and rent on the occurrence of oppression, secondly, though preserved safe from damp, insects, fire, and thieves for nearly seventy-five years, it was never applied to the most advantageous purpose to which it could have been put, to wit, causing recognition of the land mentioned in it as a talooka at the time of the decennial settlement. On these grounds I am of opinion that the said documents, the *ferd tukseem* and the *jungulbooree* sunnud, are of no avail to appellants.

Of like inutility to appellants, because wholly inconclusive, are the ikrarnamahs (or agreements) executed in 1231 and 1235 respectively by Kummer-ool-Hussun, one of the proprietors of talooka Abool Hussun, allowing appellants' co-sharers to cause registry of their names in the collector's books, as payers of part of the revenue of the said talooka, on account of mouzahs badee Suttung and Suttung, and the circumstance that part of the revenue was so apportioned,—for the measure was clearly beneficial to Kummer-ool-Hussun, who is sued, but has not defended the case, and who would of course be glad to get rid of the whole of his jumma, provided he could retain the whole of his land: and the circumstance of no objection having been made by respondent to the registry in the book of mutation, is of not the slightest moment, because there is no evidence to shew that she was aware of its occurrence.

Appellants have also filed copy of a proceeding by Mr. uncovenanted deputy collector Johnson, dated 4th December 1838, reporting, to the special deputy collector, the land in suit to be assessed land; but the sole foundation for this report is a sooruthal to this effect, signed by Humeed Oolah and some other persons, and brought in by an ameen; and the sooruthal, *per se* worth little or nothing, appears to me falsified by evidence, documentary and oral, which I shall presently notice.

It is objected, by appellants, that the mouzahwaree papers do not shew the existence of a *nankar* tenuré in mouzahs Suttung, badee Suttung, or kismut Suttung, and they have filed copy of a proceeding by Mr. deputy collector Johnson, dated 19th January 1839, reporting this fact. But, on the other hand, it may be observed that the mouzahwaree papers of talooka Abool Hussun rendered by the putwarees (in 1228) do not shew that it comprehended Suttung, badee Suttung, or kismut Suttung, though the second name occurs in the abovementioned *ferd tukseem* of Futteh Mahomed, dated in 1102 B. S., and the first is in the *jungulbooree* sunnud, dated in 1125 B. S., both of which deeds are adduced by appellants; that, though it is undoubtedly true that there is, as stated, no mention of a *nankar* tenure, 11 koolbas 4 kears of *muddudmaush* is recorded in the lakhiraj mouzahwaree papers, as in kismut Suttung, in the possession of respondent's husband, and the widows of her husband's brothers; and, further, that the suits instituted by the late Mahomed Moazum, (respondent's husband,) *versus* Aleem 'Oolah, (who from

Kummer-ool-Hussun's agreement, dated in 1231, appears to be one of appellants' co-sharers,) and others, and by Ryaz Oolah, (who is admitted in the petition of appeal to have been a derivee of Humeed Oollah, appellant,) *versus* Abchand Beebee and Umeena Beebee, (respondent's sister-in-law,) decided by the register of Sylhet, respectively in 1807 and 1814, both shew, under circumstances which are not in the slightest degree indicative of fraud, the existence of a *nankar* tenement held by respondent's derivees, so that it seems matter of no doubt that respondent's husband and herself have owned lakhiraj land, which land may have been inadvertently named *muddudmaush* by the putwaree's mohurrir, and which I hold to be the land in suit, for these among many reasons: first, because appellants denied, before Baboo Ramgutty Rai, the deputy collector, all knowledge of the possession of any lakhiraj land, which had been held by respondent or her derivees, whereas it would certainly have been pointed out, had it been other than the land in suit; and secondly, because the evidence of several witnesses, whose statements are corroborated by some of appellants' own witnesses, shews that the land in suit is respondent's *nankar*, in a mouzah to which the three names of Suttung, badee Suttung, and kismut Suttung have been indiscriminately applied.

Having then come to the conclusion that the land in suit is respondent's *nankar* land, I have only to add that she appears to me proved to have been dispossessed within the period of twelve years prior to the institution of the present suit, a fact in controversion of which a summary decree has been mentioned (but withheld) by appellants; that the amount of mesne profits, allowed by the late principal sudder ameen, is not contested in appeal; that the position of the land is shewn in the map by Bhyrub Chunder, which was not inpugned before the deputy collector, Baboo Ramgutty Rai, and that I see no bar to confirmation of the decree of the late principal sudder ameen.

It is therefore ordered:

That the appeal be dismissed, and the decree of the late principal sudder ameen affirmed with costs.

The 10th January 1849.

No. 116 of 1848.

Appeal from the decision of Moulvee Waris Ali, Officiating Moonsiff of Sonamgunge, dated 18th May 1848.

Shanundram Shah, Appellant,

versus

Sonaram Patnee and another, Respondents.

Appellant sued for 99 rupees, 11 annas, the price of 29 bhootas of mustard, on account of an old claim against respondents, who executed a deed, on the 9th Bhadoon 1253, promising that, if

they did not deliver the grain within one month, they would pay for it at the price current in the bazar of Sonamgunge.

Respondents resisted the claim, alleging that they support themselves by fishing; that they are poor men, and not traders, that they should require so large a quantity of mustard; that there is no specification in the plaint of the date or year from which the mustard was due, or by what deed it was secured; that the deed mentioned by appellant is fabricated, as inspection of it would shew; that, on the date mentioned by appellant, they went to him to borrow money from him, that he gave them 20 rupees, and, adding 9 rupees, illegal interest, took a bond from them for 29 rupees; that they repaid 26 rupees, on the 26th Jyte 1254, and went on the 11th Asar, to pay the balance to appellant, who would not receive it, demanding interest on the interest included as principal in the bond, which he refused to return.

The officiating moonsiff (Moulvee Waris Allee) observes in his decree, that the subscribing witnesses to the bond and the draftsman of it have only been able to state that the bond was on account of an old claim for mustard; and were unable to explain the year and date from which the mustard had been due, and what was the cause of so much having been borrowed by respondents, or that the latter dealt in it, or were brokers in the sale of it; that a reply to the pleas advanced by respondents was a *desideratum*, but that none was filed; that discrepancies had come out on cross examination of appellant's witnesses; that it was unlikely that a transaction for so large a quantity of mustard should have been completed, in the first instance, without a deed; that the execution of the bond in suit agreeing to deliver a large quantity of mustard in a month (*i. e.* in the month of Bhadoon) when mustard is not gathered in and is dear, was not probable; and that the appearance of the deed shewed that it had been artificially darkened, so as to make it look old: and, on these grounds, mistrusting the evidence of appellant's witnesses, he dismissed the suit with costs.

Appellant now urges that respondents have never executed any other deed in his favor; that it was unnecessary to state, in the plaint, the year and date from which the mustard was due; that respondents yearly cultivate and sell mustard, and that, therefore, in Maugh 1252 B. S., they took 58 rupees, agreeing to deliver 29 bhootas of mustard, at 2 rupees per bhoota, in the month of Chyte, but that, as a stamp could not be had on that day, no deed was executed, and as the agreement was not fulfilled the bond in suit was given; that as the bond recites the old claim, and execution of the bond is attested, and respondents have admitted dealings with appellant, there is good ground for pronouncing the claim true.

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The deed on which this suit is immediately founded is an agreement, purporting to bear respondents' "marks" in token of their

assent to deliver mustard in one month from the 9th Bhadoon (near the end of August,) *i. e.* several months before the harvest, which of this grain takes place in Chyt (March and April), with the alternative of paying the market price at a time when it must be supposed to be dear, and when the plaint shews that it was dear, *i. e.* 3 rupees, 7 annas per bhoota, whereas the price at which it was to have been delivered under the advance was 2 rupees per bhoota; and the agreement being obviously a very improvident one for respondents, appears to me one into which it must be doubtful whether they ever entered. Then again, appellant's vaqueels have this day informed me that their client has no account book to support his claim, and the petition of appeal sets forth that the 58 rupees, the origin of the asserted debt, were advanced without a bond, because no stamp was procurable on the date of the transaction; but it is unlikely, as appellant *de facto* admits by endeavouring to account for the circumstance, that 58 rupees would be advanced without a bond, to mere cultivators, by a merchant who has no account book, and it is still more unlikely, the expediency of taking a bond being not only apparent but even recognised, that appellant should be diverted from his purpose of taking one, because a stamp was not obtainable on the day of the advance. On the whole, then, whether the defence of the respondents be true or false, probable or improbable, I am constrained to distrust the transaction declared by appellant, and to reject his claim.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 17TH JANUARY 1849.

No. 164 of 1848.

Appeal from the decision of Mahomed Salim, Moonsiff of Sonamgunge, dated 19*th July* 1848.

Jyekishun Rai, Appellant,

versus

Hurreeram Shah, Respondent.

APPELLANT sued under an unpaid bond, payable in one month, and dated 28th Aghun 1253 B. S.

Respondent resisted the claim, and urged that, in 1252 B. S., his father, Hoolas Ram, borrowed 4 rupees from appellant, giving him a bond for 6 rupees, including illegal interest, and that his father wished to repay the 4 rupees, with legal interest, but that appellant would not agree and quarrelled with respondent and his father, seized respondent through a piada of Sookdeb Rai Chowdree,

extorted a bond for 9 rupees, 8 annas, *i. e.*, 6 rupees, the amount of the former bond, 3 rupees, interest for the time that had elapsed, and 8 annas interest in advance.

The moonsiff (Moulvee Mahomed Salim) observed that, though Munnee Ram Nai and Moolook Ram, subscribing witnesses to the bond, had given evidence in conformity with the plaint, they had not identified the bond; and that Bydnath Shah, the draftsman of the bond, and Keerpa Ram Shah, a third subscribing witness, to whose evidence appellant objected in his reply, and whom he would not adduce, together with Surroop Ram Shah, who was present at the execution of the bond, had declared the bond to be on account of the old debt of respondent's father: and, deeming the bond invalid under Section 9, Regulation XV. of 1793, he dismissed the suit.

Appellant now urges that, though respondent had alleged that he had been seized through a piada of Sookdeb Rai, and the bond extorted from him on account of an old bond executed by his father, with 8 annas interest in advance, this had not been proved, and cannot be true, for, had it been, a complaint would have been made to the magistrate concerning it; that Bydnath Shah, the draftsman of the bond, is respondent's master, and Keerpa Ram, his maternal cousin, that they have been aiding him in the case, and have sworn falsely in it; that they were challenged in the reply as under respondent's influence; that Keerpa Ram only speaks to hearsay of the illegal interest; and that Surroop Ram was not present when the bond was executed.

JUDGMENT.

The answer of respondent and the evidence of the witnesses have left no doubt on my mind of the execution of the bond, which is not proved to have included illegal interest, or to have been executed otherwise than voluntarily.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the claim decreed, with costs, and interest to the date of realization.

ZILLAH TIPPERAH.

PRESENT: T. BRUCE, ESQ., JUDGE.

THE 6TH JANUARY 1849.

Case No. 32 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 1st November 1848.

Shamsoonder Nundee *alias* Bungsee Buddun Nundee and others, (Defendants,) Appellants,

versus

Nubkishen Rai and Rajkishen Rai, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 788-10.

This suit was instituted on the 28th September 1847, to recover possession, with mesne profits, of droons 3-3 of land claimed by the defendants as a rent-free tenure.

The principal sudder ameen gave judgment for the plaintiffs, on failure of the defendants to prove the validity of the tenure.

I am of opinion that the principal sudder ameen has mistaken the principle by which he ought to have been guided in the investigation of the case. It is not a suit to resume an invalid rent-free tenure, but to recover possession of some land, which, although now claimed by the defendants as rent-free, the plaintiffs affirm to be a part of their revenue paying estate, and as such, to have been in possession of the zemindars until the plaintiffs acquired the estate, since which period the rent has been withheld.

The point for decision, therefore, is not whether the tenure be valid or invalid; but whether, as affirmed by the plaintiffs, the land be a part of their revenue-paying estate, the rent of which has been fraudulently withheld by the defendants some years past, on the plea that the land is rent-free.

I therefore annul the decision of the court below, and remand the case for adjudication on the above principle. If the plaintiffs prove their case to the satisfaction of the court, they will be entitled to a decree; if not, the claim must be dismissed. In suits to resume rent-free tenures, the *onus probandi* lies with the defendants; but in suits like the present, the case is different.

The usual order will issue in respect to the refund of the stamp duty.

THE 9TH JANUARY 1849.

Case No. 230 of 1848.

Regular Appeal from a decision of Moulvee Imdad Ali, Sudder Moonsiff, dated 10th November 1848.

Gooroo Churn Surma, (Defendant,) Appellant,

versus

Bannissur Bhuttacharj, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 20-10-3.

This is a suit for arrears of rent for the years 1255 to 1257, Tipperah, both inclusive, instituted by the holder of a petty rent-free tenure against certain parties whom he affirms to be his jotedars.

The defendants deny that they are the plaintiff's jotedars, and claim the land in their possession as forming a part of another rent-free tenure, their property.

The moonsiff, after a lengthened investigation, relative to the proprietary right in the land, for the most part irrelevant to the point at issue, gave judgment for the plaintiff, on the ground that it was proved that the land belonged to him, and that his farmers had received rent for it from the defendants as jotedars.

The plaintiff has doubtless produced abundance of documentary evidence, tending to prove that he is possessed of a rent-free tenure, and that he has leased it, on more than one occasion, to different parties: but, although it is admitted on all hands that the land in dispute has long been in the immediate occupation of the defendants, no single document has been filed in which they, or any of them, are mentioned, one farming kubooleeut alone excepted, and that, not only is not receivable in evidence as being unstamped, but does not bear in any way upon the point at issue, inasmuch as it purports to have been granted to the plaintiff by one of the defendants, in his capacity of farmer. It is not pretended that the defendants have ever entered into engagements with the plaintiff for rent, or that they have ever been called upon to do so, by notice issued under Sections 9 and 10, Regulation V. of 1812: and the oral evidence is both contradictory, *vide* particularly that of the witness Soodharam, as compared with that of the witnesses Koosha Gazee and Kureem, and generally suspicious. There can be little doubt that recourse has been had to this suit as an easy mode of obtaining possession of the land.

Under all the circumstances of the case, I am clearly of opinion that the right to the rent of the land cannot be determined, until the right of possession be made the subject of a suit in court. I therefore annul the decision of the court below, and dismiss the claim with all costs.

THE 9TH JANUARY 1849.

Case No. 244 of 1848.

Regular Appeal from a decision of Moulvee Imdad Ali, Sudder Moonsiff, dated 23rd *November* 1848.

Bechoo Dhobey, (Defendant,) Appellant,

versus

Sham Burrun Shah, husband of Chinta Hurrun, deceased, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 16.

This suit was instituted on the 28th January 1848, to procure the release of certain property attached in execution of a decree of court, as belonging to one Nundoolal, a judgment debtor of the defendant, Bechoo Dhobey.

Witnesses were brought by both parties; but the moonsiff, considering the plaintiff's case to be satisfactorily proved, and rejecting the evidence adduced for the defence, as unworthy of credit, gave judgment for the plaintiff. From this decision an appeal is preferred by the decree-holder.

The only new plea in appeal is, that the action ought to have been brought, not for the release of the property, but for the reversal of the sale of it, it having been actually sold in execution of the decree. On referring to the appellant, however, who is present in the court, it appears that the plea is erroneous, the property being still under attachment, and, after a careful perusal of the evidence, I am quite satisfied that the moonsiff's opinion, in respect to the value of the evidence adduced by the parties respectively, is correct. He made a mistake, however, in giving a decree for the value of the property, instead of simply directing it to be released from attachment. In other respects his decision is affirmed; costs payable by appellant.

THE 9TH JANUARY 1849.

Case No. 22 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 15*th August* 1848.

Suderoodeen, (Plaintiff,) Appellant,

versus

Ranee Kuteeanee, (Defendant,) and afterwards her representatives, Baboos Pertab Chunder and Issur Chunder, Respondents.

SUIT laid at Company's rupees 1,917-2-10.

This suit was instituted on the 14th February 1845, to obtain a refund of rent to which the plaintiff held that he was entitled, under the terms of a talookdaree lease, which declared the rent liable to

enhancement or reduction, according as the land should be found by actual measurement to be more or less than the quantity assumed in the lease.

This is the third time the case has been before this court in appeal, having been twice remanded (once by my predecessor, and once by myself) for re-investigation.

After the second remand, viz. on the 15th August last, the defendant obtained a nonsuit, on the following grounds: *first*, that the circumstance of an action not having been brought under Section 52, Regulation VIII. of 1793, for damages equal to double the amount rent claimed, formed presumptive evidence against the truth of the claim; *secondly*, that although the claim embraced a period of three years, the plaint did not specify the amount paid and recoverable on account of each year respectively; *thirdly*, that inasmuch as the plaintiff stated that he was not in possession of all the land belonging to the talook, the action involved a claim for possession, as well as for a refund of rent, and that these claims ought to have been made the subject of separate suits.

The first of these reasons might form ground for dismissing the claim altogether, but it is certainly no ground of nonsuit. Besides, the principal sudder ameen appears to have mistaken the nature of the action. Section 52, Regulation VIII. of 1793, refers to exactions of rent " over and above what is specified in the engagements of the " persons paying the same," such exactions being " considered as " extorted," whereas the object of the present suit is to procure a reduction of the rent specified in the engagements, with retrospective effect.

Neither is the second reason a sufficient ground of nonsuit, particularly at this late stage of the proceedings,—the amount annual rent, and also the amount paid by plaintiff to the defendant for the period to which the claim refers, being both given in the plaint.

The third reason is groundless. So far from the action involving a claim for possession, the plaintiff founds his claim to a reduction of rent on the very fact of his not being in possession of the land referred to by the principal sudder ameen.

Under ordinary circumstances I should have remanded the case to the lower court for investigation on its merits, rejecting, as I do, as insufficient and invalid, the reasons for nonsuiting the plaintiff; but, considering the length of time which has elapsed since the suit was instituted, the expense and inconvenience already incurred by the parties, the fact that the case has already been three times decided by the court below, and that the last decision, although only a nonsuit, expresses, to a certain extent, an opinion on the merits, I consider it expedient to retain the case on my own file.

After due consideration, I am of opinion that the claim must be dismissed. It is founded on the plea that the rent of the plaintiff's

talook, being, by the terms of his engagements with the defendant, liable to enhancement or reduction, according as the land may be found by actual measurement to exceed or come short of the area assumed in those engagements; and the land having been measured by the defendant, and found to come short of that area, in consequence of plaintiff not having obtained possession of the land in three mouzahs, and his having been dispossessed of some more, by a third party, subsequently to the measurement, that therefore, plaintiff is entitled to a proportionate reduction of rent, retrospectively, from the date of his lease.

Now, in the first place, with respect to the claim as founded on the general plea, that there is less land in plaintiff's possession than the quantity assumed in the lease, I am clearly of opinion that the stipulation which the lease contains, relative to the enhancement or reduction of the rent, was never intended to be applied retrospectively. The same stipulation appears in almost every tolookdaree lease, in this part of the country; and nothing short of a clear and specific declaration to the contrary, would justify any other interpretation of it.

With respect to the land of which, plaintiff alleges, he has been dispossessed by a third party, subsequently to the measurement, he can have no possible claim to a reduction of rent retrospectively, *i. e.* for a period antecedent to dispossession.

Finally, it would appear that no measurement of the land has ever taken place. In the plaint, it is said to have been made in the year 1250 B. S.; in the reply, it is said to have been made in 1250, and again in 1251; but, in answer to a question put to him by the lower court, the plaintiff's pleader stated that his client had instituted no appeal against the summary decrees for rent obtained by the defendant, on account of the period embraced by the present claim, because the land had not been measured. For this reason alone, the claim falls to the ground.

I dismiss the appeal and the claim with all costs.

THE 13TH JANUARY 1849.

Case No. 210 of 1848.

Regular Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Noornuggur, dated 30*th August* 1848.

Holashee Shah, (Plaintiff,) Appellant,

versus

Bukee Sonar and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 30-2-6.

This suit was instituted on the 14th July 1848, for the recovery of the above sum, the balance of the value of old gold, sold by plaintiff to the defendants.

The plaintiff states that the transaction took place on the 3rd Poos 1257 Tipperah, that the value of the gold was rupees 35-2-6, that he received rupees 5 in part payment, and that the balance was payable on the 15th of the month. He brings this suit, seven months after the date of the transaction, on the plea that the balance has never been paid.

The defendants plead that it was a ready money transaction, for rupees 26-2-9, not rupees 35-2-6, as affirmed by plaintiff, payment in full having been made at the time.

Three witnesses were brought by the plaintiff, and four by the defendants, to prove their respective pleas; but there was no documentary evidence.

The moonsiff gave judgment for the defendants, on the ground of certain discrepancies between the evidence of plaintiff's witnesses and the plaint, and also in the evidence itself. He considered further that, if the plaintiff were so much in want of money as to part with a gold ornament, the presumption was that he would require immediate payment.

Nothing is advanced in appeal, in any way calculated to affect the moonsiff's decision. It is correct, both as to the facts stated, and as to the inference drawn from them, and from the general features of the case.

The appeal is dismissed with costs, and the decision of the court below affirmed.

The 19th January 1849.

Case No. 18 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 15*th July* 1848.

Ahmud Reza Chowdry, (Defendant,) Appellant,

versus

Bechoo Jemadar and Alla Buksh Khan, (Plaintiffs,) Respondents.

This is a suit for possession of an under tenure, with mesne profits; the claim being founded on the plea that the tenure is illegally held under attachment by the defendant.

The plaintiffs are lessees of droons 14-9-18-5 of land, in chur Kishenpoorah, under a pottah granted to them by the revenue authorities in the year 1250 B. S.

The defendant, Ahmud Reza, is lessee of the entire chur under a pottah granted to him by the revenue authorities in 1251 B. S., the rent of the plaintiff's tenure being payable to him. He pleads the legal attachment of the plaintiff's tenure, under the provisions of Clause 2, Section 18, Regulation VIII. of 1819, after institution of summary suits for arrears of rent.

The principal sudder ameen gave judgment for the plaintiffs, on the ground that the attachment was illegal; in the *first* place, as having taken place from the year 1253, although the arrears of rent for which summary awards had been obtained, had been on account of the years 1251 and 1252; and in the *second* place, because it appeared that the arrears had been realized under the summary decrees.

I am clearly of opinion that the attachment of the tenure was illegal. It took effect from the commencement of the year 1253, two summary decrees for arrears of rent for 1251 and the first part of 1252 having been obtained by the defendant a few weeks previously; but the object of the attachment, as appears from the sezawal's kubooleeut and various other sources, was, not the realization of those arrears, but the collection of current rent from the year 1253. The arrears due under the decrees were recovered by suing out execution in the usual manner; but those for the period intervening between the date of the last arrear decreed, and the date of attachment, were made the subject of a third suit, instituted after attachment.

These proceedings are quite opposed to the law under the provisions of which the attachment is said to have been made. That law declares, *vide* Clause 6, Section 15, Regulation VII. of 1799, that the party instituting the summary suit shall be at liberty to attach the defaulter's tenure, " until the rent due to him, with the further rent that may become due to him after the attachment, shall have been liquidated from the produce, and that, in the event of the defaulter making good the arrear due from him, with interest at the rate of one per cent. per mensem, at any time within the current year, the attachment shall be immediately withdrawn." The law does not say that a party, who obtains a decree for arrears of rent for the first part of one year, and who realizes or proceeds to realize those arrears by taking out execution of the decree, shall be at liberty to attach the tenure from a subsequent year, with a view to provide against future contingencies: but this is what the defendant has done, and it is illegal.

In appeal, the defendant pleads, *inter alia,* that the plaintiffs' lease is voidable, under Clause 5, Section 8, Regulation VIII. of 1819, and Construction No. 1205; and in his rejoinder, he touches upon the same point: but this is altogether inconsistent with the plea of attachment.

The principal sudder ameen's decision seems to imply that the attachment took place after the arrears due under all three decrees had been realized: but such is not the case. The arrears, recoverable under the two first decrees, had not been paid to the defendant: neither had the third suit been instituted, when the tenure was first attached. This is evident from the copy of a petition filed in the collector's office by the defaulter's surety, on the 28th Bysack 1253, and from a copy of the plaint in the third suit.

With regard to the award of mesne profits, the principal sudder ameen has proceeded on a principle entirely opposed to the universal practice of the courts. Instead of ascertaining, by the deputation of an ameen, or otherwise, the amount actually collected by the defendant during the period of the illegal attachment, and giving an award accordingly, after the usual deductions for expences of management, and the rent of the tenure, he has given a decree for the amount of the rental *minus* those deductions. It is not necessary, however, to remand the case on this account. The attachment having been illegal, the principal sudder ameen's decision, so far as relates to the order for possession, must be affirmed; and the amount mesne profits to which the plaintiffs are entitled, may be determined after the decree, on the principle indicated above. Mesne profits are accordingly awarded from the year 1253, the period for which they are claimed, and the decision of the court below modified to that extent. Objection is taken by appellant to the valuation of the suit; but under Construction No. 1101, it does not seem to be too high.

All costs payable by appellant.

THE 19TH JANUARY 1849.

Case No. 19 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 22nd July 1848.

Gourmohun Shah and Kalachand Shah, (Defendants,) Appellants,

versus

Rajchunder Shah, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 435-3-5.

This suit was instituted on the 8th September 1847, to recover possession, with mesne profits, of two petty independent talooks, of which plaintiff alleged he had been dispossessed during his minority, in the year 1237 B. S., by the defendants, Gourmohun and Kalachand, and their brother, Nundaram, since deceased.

The defendants pleaded the sale of the talooks to Nundaram and his brother, Oorjunram, by plaintiff's mother, Obheya, to enable her to liquidate the debts of her deceased husband, and to provide for the support of her son, the plaintiff, then a minor. They pleaded further that the suit was barred by lapse of time.

The principal sudder ameen gave judgment for the plaintiff. He held that the period of minority being allowed for, the suit was within time; and that the evidence adduced by the defendants, was insufficient to prove either that Obheya had liquidated her husband's debts, or that any such debts ever existed.

The decision of the principal sudder ameen is somewhat more summary than it ought to have been; but with regard to the orders

passed, there exists no reason for interfering with them, either as respects the plea of lapse of time, or the character of the defendants' title. The question for consideration, after the former point had been disposed of, was whether the special circumstances of the case were such as to render Obheya competent, with reference to the requirements of Hindoo law, to alienate the talooks. The defendants pleaded, and attempted to prove, that such special circumstances did exist, but I am of opinion that in this attempt they have entirely failed, and consequently that the sale is void *ab initio.* The evidence adduced on this point consists of a small memorandum, drawn out as if forming an entry in an account book, and the testimony of two witnesses; evidence in itself both suspicious and insufficient, and, moreover, directly opposed to the bill of sale, which speaks of Obheya as sole proprietor of the talooks; neither making mention of any such person as the plaintiff, nor of the special circumstances now pleaded as having rendered the sale necessary and legal.

In addition to what the defendants advanced in the court below, they urge, in appeal, that the law officer ought to have been called upon, for an explication of the law respecting the validity or invalidity of the transfer. Had they proved the existence of any special circumstances, connected with the transaction, calculated to raise a doubt as to whether it might not be valid in law, there would have been ground for referring the point to the pundit; but no such circumstances having been established, no such ground exists. It is an acknowledged principle of Hindoo law, that the sale of landed property, by a widow, unless under special circumstances, such as those pleaded, but not proved, is invalid.

The decision of the lower court is affirmed, and the appeal dismissed with costs.

THE 22ND JANUARY 1849.

Case No. 231 of 1848.

Regular Appeal from a decision of Radhanath Sircar, Moonsiff of Toobhibaggrah, dated 11*th November* 1848.

Ameena Beebee and Moonsiff Beebee, widows of Ataoollah, (Defendants,) Appellants,

versus

Chand Ghazee, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 29-9-7-10.

This is a suit for possession of an 8 annas share of a petty independent talook, in pergunnah Singergaon, with mesne profits.

The claim is founded on a bill of sale executed in plaintiff's favor by Tumeeza Beebee, widow of Pauchcouree, in virtue of her marriage settlement. The bill of sale bears date the 5th Bhadoon 1249 B. S.; the vendor's mother-in-law, Khuteeja, being one of the subscribing witnesses.

The defendants, Ameena Beebee and Moonsiff Beebee, claim the property under a bill of sale in favor of their deceased husband, Ataoollah, dated the 15th Chyte 1248, and purporting to have been executed by both Tumeeza and Khuteeja, as heirs of Pauchcouree.

The defendant, Khuteeja, supports the plaintiff, denying execution of the bill of sale filed by her co-defendants.

The moonsiff, after a very careful investigation, gave judgment for the plaintiff.

I am of opinion that no grounds exist for interfering with the moonsiff's decision. Title deeds extending as far back as the year 1196 B. S. are filed by plaintiff: his bill of sale was registered before the other: he applied to the collector to have his name recorded as proprietor in the register of mutations, before the other party, and his name was registered: the vendors deny having executed the bill of sale filed by the defendants; both did so, at least, before the collector; and Khuteeja, being made a defendant, does so now: and it appears that on two occasions, within the period of a few months from the date of plaintiff's bill of sale, a third party, an agent of Ataoollah it is to be presumed, fraudulently obtained receipts for the revenue of the talook from the collector's office, doubtless with the view of strengthening the claim set up by Ataoollah.

It is urged that the defendant, Khuteeja, as one of the heirs of her husband, Panaoollah, and afterwards, of her son, Pauchcouree, was possessed of an interest in the talook, and consequently that Pauchcouree was not competent to settle the whole of the property on Tumeeza, nor Tumeeza to sell it to the plaintiff: but the consent of Khuteeja does away with this objection.

I affirm the decision of the court below, with costs.

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 4TH JANUARY 1849.

No. 367.

Regular Appeal from a decision passed by Moulvee Syed Azeem Ali Khan, Moonsiff of Dulsing Surai, dated 22nd May 1847.

Preetee Matoon, Mootee Matoon, Achuck Matoon, and Rhamoo Matoon, (Defendants,) Appellants,

versus

Mr. William Shearman, (Plaintiff,) Respondent.

THE respondent sued the appellants for the recovery of Company's rupees 42-14-3, being the arrears of rent due to the 14 annas instalments of 1253 Fuslee, on the cultivation of 11 beegahs and 7 biswas on cash rent, 6 beegahs, 1 biswas on kind rent, in village Nazirpoor, pergunnah Sureesah, which village was under-leased to the plaintiff by the lessee, Chuckun Lall, for two years, 1253 and 1254 Fuslee, and a further under-lease was granted to him by the lessee from 1255 to 1261 Fuslee, of 7 annas portion, and a lease of 9 annas for the sued period was granted from the proprietor, Nawab Mokeem Khan. For the above rent a summary suit was instituted in the collectorate; not having filed proofs, it was struck off the file; hence the present regular suit for the said rent.

The appellants, in reply to plaint, acknowledged the cultivation payable in cash, and alleged that payment was paid to the amount of rupees 13-1 to the amlah of the lessee, and 19 rupees to the amlah of the respondent, making the total payment, on account of 1253 Fuslee, rupees 32-1, whereby a surplus of rupees 1-15-3 is due to them. The lease from the lessee to the under-lessee was granted in Maugh. 1253 Fuslee, hence the amlah of the lessee had effected the estimate of the bhowlee, or kind rent cultivation, previous to the grant of lease to the under-lessee, to whom rupees 2-11½ only are payable. The customary annual remission of rupees 4 for a turband is expected.

The moonsiff passed a decision in favor of the plaintiff in part of the claim to the extent of Company's rupees 39-8-9, on these grounds: there is no dispute regarding the cultivation on cash rent, it is on the kind rent only; the (plaintiff) respondent demands much more than the (defendants) appellants will admit; the res-

pondent's witnesses deposed that the produce was estimated at 75 maunds, and the estimate papers, attested by the signatures of Mhadab Misser and others, were filed by the respondent; the appellants' paper of estimate, signed by Mhadab Misser and others, exhibits 6 maunds and 15 seers; an ameen was deputed to make the necessary enquiry, who filed papers in corroboration of the appellants' paper, which are not to be depended upon, arising from the papers filed by both parties which appear to be signed by the same persons; the respondent has filed several papers, and the appellants one only, therefore that of the appellants is not to be depended on; from the respondent's account containing some items contrary to the regulations, after deduction of them there remains rupees 39-8-9, due to the respondent.

The appellants against this decision urged: The papers filed by them were acknowledged by Mhadab Misser, who formed the estimate, and he denied the khusru, or account, filed by the respondent, his signature not being thereon. It was wrong for the moonsiff to make such papers valid. Upon their own khusru, or account, Mhadab Misser and others have signed their names. The evidence of the respondent's witnesses, depended on by the moonsiff, is false: for they were not present at the time the lessee held possession and effected the estimate. An item of rupees 4, within the money rent, has not been deducted, the cause thereof is not made known. The payments made to the amlah were in Sicca rupees, to convert them twice into Company's is incorrect.

The respondent, in answer, alleged, when he entered into the under-lease in the month of Maugh 1253 Fuslee, the lessee gave him the paper of estimate of the produce, signed by Mhadab Misser and others, agreeably to which the ryuts paid their kind rent: the objections of the appellants are not to be listened to, if Mhadab Misser has colluded with the appellants, and denies the papers filed by him. The moonsiff has compared the signatures on the papers of both parties and declares them to correspond. The witnesses adduced by him being acquainted with the matter gave their evidence. With regard to the conversion of the rupees, it is foreign to this matter.

COURT.

It appears the appellant first sued under a summary suit in the collectorate, and, after causing one or more of the appellants to be apprehended, failed to carry on the suit, whereby that suit was struck off the file and the adverse party were released. This summary suit should have been called for and filed in this suit under Section 10, Regulation XIV. of 1824, particularly as the appellants allege, in the answer to the plaint, the respondent carried away all the mangoes from the trees while they were under restraint on account of the respondent's summary suit at the collectorate. And

although the grant of the under-lease to the respondent is acknowledged by the appellants, yet it should have been called for and filed, to ascertain therefrom whether the respondent had a claim to levy the rents from the commencement of the year when the lease was granted in the middle of the year, and three months after, an estimate of the produce on kind rent had been effected. Under the above circumstances the investigation is incomplete, and the moonsiff has not compared the several items in the appellants' signed estimate with those in the respondent's estimate, or shewn the difference in the two, therefore the decision of the moonsiff is reversed, and returned for re-investigation on the points indicated: amount of stamp of appeal plaint to be returned.

THE 5TH JANUARY 1849.

No. 447.

Regular Appeal from the decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 21st June 1845.

Shaik Mozum Ali and others, (Defendants,) Appellants,

versus

Musst. Rahoofun and others, (Plaintiffs,) Respondents.

THIS suit was instituted to recover the sum of Company's rupees 1,153-4, being the balance and interest on a sum of advance made on the lease of the village Puharpore Chuprah Budoo, pergunnah Sureesa, dated 17th Kartick 1231 Fuslee.

For the whole matter of the case *vide* the printed Decisions of the Zillah Courts for February 1848, Tirhoot decisions, pages 35 and 36, dated 16th February 1848, case No. 447, and printed Decisions of the Sudder Dewanny Adawlut for the month of July 1848, pages 722 and 723, 27th July 1848, petition No. 150 of 1848.

It is merely necessary to observe the case cited by the Sudder Court, as a precedent to this, is not precisely so: for the 4th and 9th paragraphs of that case, No. 24 of 1845, shew that lease was granted to be held for a specific period, and for such further time as required to liquidate the sum advanced from the resources of the land, and in this case the land was to be held until such time the money borrowed or advanced was discharged in cash; but they are so far analogous, that the land in both cases was to be held in possession until the money advanced had been satisfied, therefore in this case, as in that, the law of limitation does not apply.

On re-investigation of the case, it appears the decision passed by the principal sudder ameen, in favor of the respondents, was on insufficient proof. The witnesses adduced by the respondents deposed the rent payable to the lessor was rupees 41, the lease shews it was rupees 38 only. They deposed to the payment of the annual rent in general terms, that is without any definite particulars. One of the witnesses only was questioned how he knew the rents were paid, answered he was a collector of the rents of the village, which is a vague answer. From such evidence the rents cannot be deemed to have been paid and particularly from not producing the receipts of payment. The respondents were directed to prove the part payment of the advance money, which they did not attempt to effect.

The respondents not having satisfactorily proved the payments of the rents stipulated in the lease, of which, by their own shewing, they held possession for nearly 14 years, the lessors are entitled to the payment thereof for the period of 12 years, with interest thereon, calculated according to the customary usage of zemindars on arrears of rent of their ryots, for beyond the period of 12 years the demand of rent is barred by the law of limitation. The calculation drawn out shews a trifle in favor of the appellants, above the original amount of Sicca rupees 762 advanced on the lease, and the rent payable to the lessors being Sicca rupees 38 annually, by kists, or instalments, hence the respondents have nothing to receive. Consequently, ordered, decree for appellants, the decision of the principal sudder ameen reversed, and costs chargeable to the respondents.

The 9th January 1849.

No. 290.

Regular Appeal from a decision passed by Sheik Nadir Ali, Moonsiff of Bhowarrah, dated 10th April 1847.

Benee Race and three others, (Defendants,) Appellants,

versus

Rambuksh Race and three others, (Plaintiffs,) Respondents.

This suit was instituted by the respondents for recovery of Company's rupees 143-1-2, being arrears of rent on cultivation of 15 beegahs, 18 biswas, 13½ dhoors on cash rent, and 15 biswas on bhowlee, in the village of Seereepore, pergunnah Juckulpore, from 1245 to 1247 Fuslee, cultivated by the appellants.

The appellants, in answer to plaint, deny the cultivation appertains to the respondents' village, but belongs to their own village Bundeh,

alleging formerly there was a boundary dispute between the proprietors of the two villages, that a dispute regarding 25 beegahs of land was adjusted by a decision of the judge, dated the 4th April 1813, under Regulation XLIX. and a decision of the foujdarry court, dated 3rd February 1832, will shew their right to the cultivated land, and the demand of rent is a renewal of the dispute for the same land.

The respondents, in their rejoinder, allege the boundary of the villages was pointed out by Gunga Ram, proprietor of Seereepore, and the boundary marks were fixed by the arbitrators of both villages, Bulbudder Raee and Ram Raee, proprietors of Deeodah, pergunnah Kurrolee Dhur: decision dated the 30th of Maugh 1201 Fuslee, will shew the land appertains to their village Seereepore.

Rung Loll Raee and nine others filed a third party petition in corroboration of the appellants' answer to plaint.

Puharee Loll Doss and four others, filed a third party petition in corroboration of the plaintiffs' statements, and that the former dispute was for another parcel of land.

The moonsiff passed a decision in favor of the respondents after deduction of rent on account of khuror, which he did not see, for the sum of Company's rupees 73-8-10½, on the grounds of the decision passed in case 109, in which the respondents were plaintiffs, *versus* Bhurosee Raee was defendant, which is to this purport: with a view to adjust the allegations of the defendants (in both cases) the moonsiff himself proceeded to the spot, from his own ocular demonstrations and statement of the people, ascertained the cultivated lands to be situate in the (plaintiffs') respondents' village, not having seen any khuror, the rent on that account be deducted, and decree to the plaintiffs (respondents) for the remainder.

The appellants urged the suit was for rent, and the proprietary right of the land was investigated by the moonsiff, which is contrary to the Section 4, Regulation II. of 1821. Notwithstanding the moonsiff proceeded to the spot, he made no enquiry, and did not take into consideration the decision passed under Regulation XLIX. or the foujdarry proceeding.

Respondents answered, moonsiff himself proceeded to the spot, made enquiry, and decided in their favor. The decision under the Regulation XLIX. and the foujdarry proceeding are of no utility.

Court.

The suit is for rent of land cultivated, but from the tenor of the pleadings it tends to be more a dispute between the proprietors of the two different villages, to which the cultivated land appertains, for the party sued are some of the proprietors of the adjoining village, who allege the cultivated land, for which rent is demanded from them, appertains to their own village, Bundeh. From the

circumstances of the case, the mind is led to believe the cultivation to be contiguous to the boundary land of one or other of the villages, yet it is strange that the witnesses adduced by the respondent declared they were not acquainted with the boundary of the land of village Seereepore. The witnesses adduced by the appellants described the boundary between the villages. It appears the moonsiff proceeded to the spot, and, previously to so doing, passed a proceeding, directing both parties to be present on the spot. On his return he passed a decision on the cases, in which it is stated that from his own ocular demonstration and the statement of the people ascertained the cultivated land is situate within the land of the plaintiffs' (respondents') village, and did not see any khur or thatching grass. Although a judge's statement is not to be doubted, yet a mere statement in a decision, without proof, can only be considered by an appellate court as grounded on assumption. It is not shewn which party or whether both pointed out the cultivated spot under dispute, which direction it lieth, and the distance thereof from the boundary mark, and of which of the two villages, and the names of the persons from whom it was ascertained the cultivated land appertained to the respondents' village, hence in the absence of any proof of these points, the decision is reversed as a mere assumption, and the case returned to be decided *de novo*, to re-peruse the whole of the papers of the case, and to decide according to the merits of the case. The amount of stamp of the appeal plaint to be returned to the appellants.

THE 9TH JANUARY 1849.

No. 298.

Regular Appeal from a decision passed by Sheik Nadir Ali, Moonsiff of Bhowarrah, dated 10th April 1847.

Bhurosee Raee, (Defendant,) Appellant,

versus

Rambuksh Raee and three others, (Plaintiffs;) Respondents.

THIS suit was instituted by the respondents against the appellant for arrears of rent to the amount of Company's rupees 186-5-½, on the cultivation of 6 beegahs 12 biswas of land, in the village Seereepore, pergunnah Juckulpore, from the year 1245 to 1249 Fuslee.

The plaint, answer, petitions of the third parties, the decision, and appeal are similar to case No. 290, just ordered to be returned for re-investigation, but the appellant having filed a petition, withdrawing his appeal, the case therefore is struck off the file.

THE 10TH JANUARY 1849.

No. 310.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 13th April 1847.

Rada Singh, (Plaintiff,) Appellant,

versus

Ramburt Raee and Gopaul Raee, (Defendants,) Respondents.

THE appellant instituted the suit against the respondents to recover Company's rupees 44-2, being arrears of rent from the year 1249 to 1252 Fuslee, on the cultivation of 3 beegahs, 12 biswas, and 16 dhoors of land, in village Reisalutpore, pergunnah Mulkee.

The plaint sets forth, the village was sold by auction on account of arrears of revenue due to the Government, at the latter end of the year 1247, and was purchased by himself and Shaik Mohamud Hussun Reiza. From that period they have been in possession. Purshaud Raee, the father of the respondents, who formerly cultivated the land, was sued for the rent of the same parcel of land, on account of balance of rent for the year 1248 Fuslee, under a summary suit in the collectorate of Monghyr, who having acknowledged the rent was due, a decree was obtained. Purshaud Raee died in 1249, and his sons, the respondents, cultivate the said land, but will not pay the rent, therefore sue them.

The respondents, in answer to plaint, deny having cultivated any land in the appellant's village, or having any knowledge where it is situate. The decree said to have been obtained against Purshaud Raee, he has not stated against what Purshaud Raee, it could not have been their father, who was very old and could not cultivate. The respondents cultivate 3 beegahs of land belonging to Kazee Fussat Ali, deceased, in the village Rampore Meiman, which they hold under a pottah, or grant, from the aforesaid kazee, the rent thereof was regularly paid to the kazee until his demise, since then the rent has been paid to his widow, and they hold receipts of the payment of the rents.

Musst. Beebee Lootfun, widow of Kazee Fussat Ali, filed a third party petition, urging the land descended to her from the father of her husband, the bill of sale thereof is dated 15th Shuhr Mohurrum 1173 Fuslee, the rent is continued to be paid to her, the proprietor, being in possession.

The moonsiff dismissed the suit, on the grounds, the decision filed is not for this year, and against another person,—and conformable to

Construction No. 696, it is proved the defendants (respondents) paid the rent to the third party.

The appellants urged that the moonsiff has passed a decision contrary to the proof in the face of the proceedings; he should have deputed an ameen to make the necessary enquiry of the case. The land in the summary suit decision filed, is the same for which the rent is now sued. This land was formerly partitioned, and formed a part of the village Reisalutpore.

COURT.

The appellant in the original suit has not filed the bill of sale of his auction purchase, to shew what parcel of land and in what village it is situate; and although he has filed a summary suit decision, it does not exhibit he proved his right to sue by filing the bill of auction sale. A ryut, named Purshaud Raee, was sued for rent, he was seized and brought to the collectorate of Monghyr, he acknowledged the rent was due, pleaded inability to discharge it, but afterwards promised to do so in one month; whether that rent was ever paid, there is no proof of it shewn in this case; in the absence of that, and the respondents, the present party sued, not having ever paid rent to the appellant, Construction No. 696 applies. The decision of the moonsiff, being grounded thereon, must be upheld, therefore, ordered, the decision be affirmed, the appeal rejected, with costs chargeable to the appellant.

THE 10TH JANUARY 1849.

No. 320.

Regular Appeal from a decision passed by Moulvee Syed Azeem Ali Khan, Moonsiff of Dulsing Surai, dated 20th April 1847.

Sreenauth Raee, (Plaintiff,) Appellant,

versus

Runglall Raee and five others, (Defendants,) Respondents.

THE appellant instituted the suit against the respondents for the sum of Company's rupees 93-8-4½, as due on kind cultivation of 7 beegahs, 10 biswas of land in the year 1253 Fuslee; bhumoter land situate in village Surwulpore, pergunnah Sureesa. The plaint sets forth the bhumoter was leased to him from 1253 to 1257 Fuslee, by Bhookun Tewarree and others; the respondents, being cultivators of bhowlee land or in kind rent, took away the whole of the produce after effecting the estimate, without giving up the proprietary portion, therefore have sued them.

One of the respondents, Runglall Raee, in answer to plaint, alleges: the appellant is not in possession of his lease, all the proprietors have not signed the lease, there are several other sharers. Previously thereto, all the proprietors granted him a lease of the land, on advance, those proprietors who have signed the appellant's lease have instituted a suit for the reversal of his (the respondent's) lease, and subsequent to the institution of their suit against him, they granted the lease to the appellant, from malice on demanding payment of the advance money.

Hunooman Raee, respondent, alleges he cultivates 1 beegah by pottah, or grant, from Runglall Raee.

The remaining respondents deny having any concern whatsoever in the matter.

Gouree Tewarree and Ram Sahee Tewarree filed a third party petition, urging: they had leased the land to the plaintiff (appellant) under two leases: half of the land by Gouree Tewarree and others, and the other half by Ram Sahee Tewarree and others, from 1253 to 1257 Fuslee.

The moonsiff dismissed the suit on the grounds: the possession of the plaintiff (appellant) is not discoverable in the year 1253 Fuslee, for the decision for the reversal of the lease, dated 19th March 1846, the lessors in that case declared the lease was granted from 1251 to 1257 Fuslee; the leases now filed, are dated 1253 to 1257 Fuslee, from which it is clear these leases were granted after the institution of the suit for cancelment of the lease granted to Runglall Raee, who was at that time in possession, therefore wrongly granted.

Against this decision the appellant urged: the leases are from the commencement of 1253 Fuslee, the whole of the cultivators were sued for the rent of that year, how was it ascertained he was not in possession? Owing to the dispute regarding the possession, the former lease, dated 1251 Fuslee, was returned, and the present leases substituted by the proprietors from 1253 to 1257 Fuslee. The lease of the respondents having been cancelled by decision of the court, and the proprietors having ackowledged that they granted the leases, he was entitled to the rent.

COURT.

It appears from the decision which cancelled the lease, under which Runglall Raee held possession, was not a correct lease, and moreover it was to elapse at the end of 1252 Fuslee, hence the possession of the land by Runglall Raee subsequent to that period, was not justifiable; and thereby the lessors had an apparent claim to grant leases from the commencement of the year 1253 Fuslee. The decision of the moonsiff being passed on an erroneous opinion, it is reversed, and the case be returned to be tried *de novo* on its merits: amount of stamp of appeal plaint to be returned to appellant.

THE 15TH JANUARY 1849.

No. 8.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen of Muzufferpore, dated 13*th December* 1845.

Mussts. Beebee Ekram and Beebee Bhaseerun, (Defendants,) Appellants,

versus

Muhunt Hunman Doss, (Plaintiff,) Respondent.

THE respondent instituted this suit against the appellants for the reversal of the order passed by the settlement officer, dated 30th March 1840, by the erasement of the names of the appellants, and to substitute the name of the respondent in the settlement of the village Rampore Koord, purgunnah Nanpore, and for possession of the whole 16 annas of the said village, together with mesne profits thereon from the date of the settlement to the date of institution of this suit. Total amount of action is laid at Company's rupees 1,215-8-3.

The cause of this suit is to be ascertained from the latter part of the plaint which is to this purport: The village was not acquired by the ancestors of the appellants, that the settlement thereof should be effected with them; it was acquired by his (the respondent's) ancestors, who sold the milkeeut (or property) and granted a mookurruree pottah of the minhye (or a lease in perpetuity of the rent-free land) to the ancestor of the appellants, from which there is no objection to their right of the milkeeut (or property), their lease in perpetuity is founded on the rent-free land. When holding the land rent-free was by the decision passed in favor of the Government as unauthorised, then the lease in perpetuity of the rent-free land was of itself dissolved, whereby the appellants have no claim thereto. That he (the respondent) was in possession, is proved by the rents thereof having been regularly received. The appellants are entitled to the malikana, and the right of effecting the settlement was with him, the respondent, which not having been done, it thereby becomes necessary for the court to order the cancelment of the names of the appellants, and to direct that the settlement be effected with him (the respondent) for the payment of the revenue to the Government, and to be put in possession of the disputed property.

The appellants, in answer to plaint, allege: the suit is under sundry circumstances erroneous: it is not worthy to be brought to a hearing by the court, nay liable to dismissal, arising from the case having been once finally investigated and decided cannot be twice instituted in court. The plaint is for the reversal of the order passed by the settlement officer, which having been appealed against before the superintendent of khas mehals, who affirmed the order, there-

fore, not having sued for the reversal of that also, the respondent's suit is irregular. In fact the respondent has no claim to the minhye property under the following circumstances.

Muhunt Gobind Doss granted a mookurruree pottah of the minhye (or lease in perpetuity of the rent-free land,) dated 14th Shuhr Zilhij, agreeing with the month of Chyte 1212 Fuslee, to Mobaruck Ali and Fussul Ali, subsequent thereto sold to them the proprietary right of the village. After the demise of the aforesaid muhunt, there arose a dispute between his heirs. Ghybee Doss appointed Beichun Rawut and Joyram Singh lessees of the village, who dispossessed Mobaruck Ali and Fussul Ali. They instituted a suit in the court for the property and mookurruree, and obtained a decree from the register, dated 7th December 1811, in which case Beichun Rawut and this Hunman Doss respondent, filed bazeenameh and ikrarnameh. On appeal, the decision was affirmed by the judge, on the 21st June 1816, and also on special appeal by the provincial court of Patna, on the 13th April 1820, from which decisions possession has been held twenty-four, twenty, and fifteen years; conformable to those decisions, Meer Mobaruck Ali and Fussul Ali were put in possession, which Meer Mobaruck Ali, with the consent of Meer Fussul Ali, gave in exchange for money a present to his wife, Mussamut Rumzoo Ulnissa, and her name was recorded in the collectorate. When the village was attached by the Government under Regulation II. of 1819, and Regulation III. of 1828, then the respondent preferred his claim for the settlement to be made with him, which was rejected, and the settlement was effected with Musst. Rumzoo Ulnissa, who sold the village by bill of sale to them (the appellants) and caused a mutation of their names in the records of the collectorate.

The principal sudder ameen passed a decision in favor of the plaintiff (respondent) on the ground: the ancestor of the respondent sold only the proprietary right and granted a mookurruree pottah of the minhye to the ancestor of the defendants (appellants,) for it appears from the former decision the suit was merely for the proprietary right and the mookurruree; the sale of the minhye is not ascertainable. The evidence of witnesses and documents filed prove the rent of mookurruree was regularly paid to the respondent, this proved his claim. When the Government attached the minhye, the existence of the mookurruree fell demolished. The plaintiff (respondent) being the principal holder of the minhye is entitled to have the settlement made with him. Therefore, ordered, a decree for the respondent, and reversal of the order of the settlement officer by expunging the names of the appellants and insertion of the name of the respondent for the whole 16 annas of the disputed village, with possession to be given him, and also the mesne profits to the date of being put in possession.

Against this decision, the appellants urged, which briefly is to this purport: Notwithstanding proof was established that the ancestors of the respondent granted a mookurruree pottah of the whole minhye land, and sold the proprietary right of the village to the ancestor of the appellants, and that this respondent filed bazeenameh and ikrarnameh in the case litigated, which was carried on to the provincial court of Patna, and decrees obtained from the several courts, yet the principal sudder ameen has passed a decree in favor of the respondent for the proprietary right of the whole minhye to the exclusion of right to the mookurruree. The settlement officer, after making full enquiry of the circumstances, effected the settlement of the village with them. The court is not empowered to take cognizance of settlement matters under Construction No. 1371, dated 17th March 1843, and the Government has not been included in this suit.

Respondent answered: when the Government officers attached the minhye land, the appellants had no claim to retain possession of the mookurruree; they are entitled to the malikana, and the settlement is required to be made with him, the respondent. The Construction No. 1371, which the appellants quote as barring the courts from taking cognizance of settlement matters, specifies the courts are empowered to investigate the merits of the plaintiff's claim. Not requiring to diminish the jumma, it is not necessary to sue the Government. The former decisions mentioned by the appellants are respecting the milkeeut and the mookurruree, and not regarding the minhye.

COURT.

On the part of the appellants no documents have been filed in support of their allegation. The respondent has filed six documents, of which one only tends to the elucidation of one of the points to be ascertained. Copy of an English letter, No. 2645, dated 20th of November 1846, from the revenue commissioner of Bhaugulpore, addressed to the collector of Tirhoot, regarding the settlement of the village Byriah, in which is stated, viz. "And, in reply, to observe that agreeably to the principle promulgated in the order of Government, No. 1035, dated 3rd August 1841, (copy of which is herewith forwarded for your information and guidance,) the claim of the malicks and *quasi* mookurrureedars must be disallowed, and the settlement effected with the disseized lakhirajdars at half the rental jumma." Although the promulgation of the order of the Government on this head appears not to have been issued for sixteen months subsequent to the settlement being effected with the ancestor of the appellants, yet from the tenor of the part of the letter quoted, it would seem the respondent is entitled to have the settlement effected with him. There is no proof adduced that the mookurrureedars' claim to hold possession

of the mookurruree was demolished, as declared in the decision of the principal sudder ameen; that point is not supported by any investigation of the customary usage regarding it, or by documental proof, or by evidence of witnesses. As the ancestors of the appellants have held possession of the mookurruree for more than twenty-four years under decree of court, which was affirmed on appeal, it cannot be legally set aside or reversed under Section 16, Regulation III. of 1793. The appellants must be considered to hold the same position in the village as they held previously to the decree in favor of the Government for the assessment of the village. Therefore, ordered, the appeal be dismissed, that the settlement of the village be effected with the respondent, that the decision of the principal sudder ameen be amended in so much that the appellants remain in possession of their mookurruree lease on the stipulation thereof, and they are not liable to payment of mesne profits. Costs chargeable to the appellants.

THE 16TH JANUARY 1849.

No. 323.

Regular Appeal from a decision passed by Moulvee Syed Eradut Ali, Moonsiff of Muzufferpore, dated 21st April 1847.

Doolee Chund, (Defendant,) Appellant,

versus

Tota Ram Sahoo, (Plaintiff,) Respondent.

THIS suit was to recover the sum of Company's rupees 50-4-3-4, being the principal and interest on a running account for provisions furnished to the defendant from the shop of the plaintiff. An account to the 30th Maugh 1247 Fuslee was drawn out, shewing a balance of Company's rupees 10-3, to which was added rupees 54-11-9, for provisions furnished previously thereto, the chittas for which had been taken away by the defendant, making a total of rupees 64-14-9; of this 35 rupees were paid, leaving a balance of rupees 29-14-9; further provisions were furnished in the month of Phalgoon to the extent of rupees 3-5-6, and in Chyte rupees 2-7-6, making the principal now due rupees 35-11-9, for which, with interest thereon, this suit is instituted.

The defendant denied being indebted to the plaintiff, having adjusted the account with him, and having taken away his chittas.

The moonsiff passed a decision in favor of the plaintiff for Company's rupees 25-11-9, interest chargeable thereon from the time of ceasing to take supplies of food from the shop of the plaintiff, on the grounds: the defendant's acknowledgment of having taken supplies of food from the shop of the plaintiff, evidence of wit-

nesses having proved the defendant signed the account, and that demand of the balance had been repeatedly made.

The defendant appealed, urging that in the body of the plaint rupees 35 were stated to have been paid to him, and at the foot that rupees 45 had been received; if both these sums were added, there would be no balance due but a surplus forthcoming to himself, &c.

COURT.

The account filed, said to have been signed by the defendant (appellant,) is to the period including the month of Falgoon, which does not correspond with the tenor of the plaint; and the witnesses deposed that the account was signed by the appellant in their presence in the month of Poos 1247 Fuslee, one month prior to that mentioned in the plaint, in which the account is stated to have been drawn out, notwithstanding there is an item of charge for Falgoon therein. The witnesses were not shewn the account, to prove that the signature thereon was that of the appellant, effected in their presence. The chittas filed for provisions furnished in Chyte were not verified, the name on them cannot be deciphered by this court. In fact, the whole shews the decision to be erroneous, on insufficient investigation into the matter. Therefore, ordered, the decision be reversed, and the case be sent back for re-investigation *de novo*. Amount of stamp of appeal plaint to be returned to appellant.

THE 16TH JANUARY 1849.

No. 332.

Regular Appeal from a decision passed by Moulvee Syed Azeem Ali Khan, Moonsiff of Dulsing Surai, dated 26th April 1847.

Musst. Bheed Koonwur, proprietor, and Kishnoo Matoo, gomashtah, (Defendants,) Appéllants,

versus

Shaik Mohamud Daraub and Shaik Kadur Buksh, (Plaintiffs,) Respondents.

THE respondents instituted this suit for the reversal of the summary suit decision passed by the collector of Tirhoot, under date 26th of September 1845, amount of action is laid at Company's rupees 32-10-5, alleging the land for which the appellants sued for rent is their own lakhiraj land, chuck Hubbeeb, belonging to village Syedpore, pergunnah Surasah, that they do not cultivate any land appertaining to the appellants. The evidence of the putwarree is false, the document on which the decision was grounded is a fabri-

cation, for they did not sign it, and on which point no enquiry was made by the collector.

Kishnoo Matoo answered the whole village appertains to Musst. Bheed Koonwur, and that there is not a single parcel of malikana, fakeerana, or lakhiraj land within the village.

Musst. Bheed Koonwur answered the village was acquired by the ancestors of the father of her husband in 1185 Fuslee, and, at the time of settlement in 1197 Fuslee, it was registered in the name of the father of her husband, at which period the respondents made no claim. In 1839 A. D., Kasheedyal sued for the proprietary right of the village, which was dismissed on the 5th September 1840; in that case the respondents did not come forward to make any objection as a third party, which shew their claim to lakhiraj is false.

Shaik Abdool Jaleed and two others in one petition, and Shaik Naseebullah in another petition, filed by them separately as third parties, are in corroboration of the plaint, and alleging they are sharers in lakhiraj land.

The moonsiff passed a decision in favor of the respondents on the grounds: the dispute between the parties, whether the land was revenue or lakhiraj, it was the province of the collector to refer the parties to adjust their dispute in the civil court under Section 4, Regulation II. of 1821. Therefore the decision, &c., the objections of the defendants (appellants) are erroneous. The appellants were required to file the dudah, under proceeding, dated 26th August 1846, which they have not done or proved it. The petition of the appellants to refer the case to the collector under Section 30, Regulation II. 1819, does not apply to this case, the respondents having filed documents from which it is proved the land is within the lakhiraj land.

Against this decision the appellants urged: the collector, after making the customary investigation in the records of his office, passed a decision in their favor: for the dudah required by the moonsiff, there was not sufficient time allowed to file before the decision was passed.

Court.

In the proceedings of the moonsiff, dated 26th August 1846, no mention is made that the defendants (appellants) were required to file the dudah, hence it must have been required subsequently to that date; but when it is not ascertainable from the papers of the case, therefore the allegation of the appellants, not allowed sufficient time to file the dudah, may be true. In cases of appeal from summary decisions of collectors, the point to be ascertained is, whether substantial proofs were adduced to warrant the decision passed by the collector: extraneous matter should not be admitted in appeal. The collector, in his decision, seems to have been guided by Construction No. 696, dated the 6th July 1832. To ascertain the justness

or otherwise of the decision passed by the collector, the moonsiff should have called for the summary case from the collector, and filed it in this case under Section 10, Regulation XIV. of 1824; not having done so, the investigation of the moonsiff is insufficient. Therefore, ordered, the decision be reversed, and the case be returned for re-investigation *de novo;* the amount of stamp of appeal plaint be returned to appellant.

THE 16TH JANUARY 1849.

No. 333.

Regular Appeal from a decision passed by Moulvee Syed Azeem Ali Khan, Moonsiff of Dulsing Surai, dated 25th April 1847.

Musst. Bheed Koonwur, proprietor, and Kishnoo Matoo, gomashtah, (Defendants,) Appellants,

versus

Rubbee Tantee and two others, (Plaintiffs,) Respondents.

THIS case is also for the reversal of the summary decision passed by the collector of Tirhoot, on the 26th September 1845. The amount of action laid at Company's rupees 12-14-9½. Being similar to case No. 332, this case is also returned to be re-investigated *de novo,* and amount of stamp of appeal plaint be returned to the appellants.

THE 23RD JANUARY 1849.

No. 343.

Regular Appeal from a decision passed by Moulvee Syed Mohamud Mohamid Khan, Sudder Ameen of Muzufferpore, dated 30th April 1847.

Kishenpersaud Chowdrey and Seehooram Chowdrey, (Defendants,) Appellants,

versus

Hoosun Buksh, the father and guardian of Shaik Goolam Buksh *alias* Munhoer Ali, minor, (Plaintiff,) Respondent.

THE appellants appealed against the decision of the sudder ameen as having been passed erroneously in favor of the respondent, who had sued them for balance of ground-rent to the amount of Company's rupees 22-7, on which a saltpetre godown was built, at a higher rate than agreed on. Previously to the case being brought up for hearing, the appellants presented a petition of withdrawal of the appeal. Having established, by necessary enquiry, that the applicants were the real appellants, the petition of withdrawal of the appeal was admitted, and the appeal directed to be struck off the file.

THE 23RD JANUARY 1849.

No. 334.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 28th April 1847.

Syed Shah Karamut Ali and three others, (Plaintiffs,) Appellants,

versus

Shah Reiseed Ali and Ram Ali, sons of Zamanut Shah, (Defendants,) Respondents.

THIS suit was instituted for the reversal of the proceedings passed by the magistrate, dated 24th January 1846, and for the possession of 7 beegahs, 3 biswas, and 3 dhoors of land, within 8 annas puttee of the whole 16 annas of the village Sundulpore, pergunnah Bulleah, with mesne profits for the year 1253 Fuslee. Amount of action laid at Company's rupees 90-10-6.

The plaint sets forth: The village was formerly lakhiraj, of which the appellants held one half and Sheik Mohamed Alli Kazee and others the other half. Having been attached under the regulations by the Government officers, a settlement was effected with them. Afterwards the respondents applied to the collector to separate the abovementioned parcel of land from the settlement; after investigation, was rejected, whereon the respondents complained to the magistrate under Act IV. 1840, who decreed in favor of the respondents, and directed the thanadar to put them in possession; being dispossessed thereby of the parcel of land which is situate in their puttee, instituted a suit, which, from failure of filing proof, was struck off the file on the 26th of October 1848; therefore again renew the suit.

The respondents allege the parcel of land was never included in the settlement with the appellants; the land is fakeerana, (or charity land) which descended from their ancestors to their father, being sweepers of durgah Peer Auleeah; the appellants have no right to the parcel of land.

The moonsiff passed a nonsuit, on the grounds that the settlement of the village was effected with all the proprietors in one settlement, and the proprietors of the other 8 annas not having joined in the plaint or made defendants, the suit cannot be investigated.

The appellants against this nonsuit urged: the putteedars of the other 8 annas share have no concern in the parcel of land under dispute, which is situate in their own puttee; if the other putteedars had any claim thereto, they would have filed a third party petition; prior to the settlement of the village with Government, both shares had been partitioned by themselves and held, the dispute not being with the other sharers: the decision of the moonsiff is therefore irregular.

COURT.

From the proceeding of the magistrate it appears the respondents complained in the foujdarry, declaring they had been dispossessed by the appellants, who held the half share of the village in which their land was situate; hence the litigation is apparently between the appellants and the respondents only, consequently the suit was proper and the nonsuit irregular. Therefore, ordered, the decision of the acting moonsiff be returned, and the case to be tried on its merits. Amount of stamp of appeal plaint be returned to appellants.

THE 23RD JANUARY 1849.

No. 339.

Regular Appeal from a decision passed by Moulvee Syed Azeem Ali Khan, Moonsiff of Dulsing Surai, dated 28th April 1847.

Durrum Lall Raee and thirty others, (Plaintiffs,) Appellants,

versus

Peertee Ram Raee and five others, (Defendants,) Respondents.

THIS suit was for investigation of the proprietary right to be put in possession, mutation of their names in records of the collector, and for partition of the revenue and land from the village of 12 gundahs portion, within 2 annas and 8 gundahs, and that within 3 annas 4 gundahs of the whole 16 annas of the village Basdebpoor, principal and dependencies, pergunnah Surisa, and for the reversal of the orders passed by the collector, dated 24th June 1845, and of the revenue commissioner, dated 25th December 1845. Amount of action laid at Company's rupees 55, being three times the amount of the annual rent roll.

The plaintiff states the village was the property of Juggun Raee, the ancestor of both parties; he had five sons, the last of whom, Keimraj Raee, was the ancestor of both parties, he held a fifth share, 3 annas and 4 gundahs of the village, and had issue seven sons, three of them died without issue; of the existent four, three were ancestors of the appellants, and one of the respondents, each held possession of 16 gundahs. The ancestors of the respondents applied to the collector for a partition of 1 anna and 8 gundahs portion as appertaining to them; the appellants objected thereto, but the collector directed the partition to be effected. An appeal was made to the revenue commissioner, who directed the collector to submit their petition, together with the papers of the partition when completed, that the requisite order might be passed. Therefore this suit is instituted to prohibit the partition until this suit be disposed of.

Peertee Raee, one of the defendants (respondents) alleged that Keimraj Raee, the ancestor of both parties, had two wives. From the first he had issue Deer Raee and Sehoo Singh Raee. From the second wife had issue five sons, Purrunput Raee, Kumlooput Raee,

Soophul Raee, Bhugbuttee Raee, and Kasa Raee. Of the issue of the first wife, Seehoo Singh Raee died without issue; Deer Raee also died without issue, as his heir, by adoption of the grandfather, of this respondent, Peertee Raee, took place. In 1152 Fuslee, arbitrators were appointed to adjust a dispute between the sharers. From their decision, 16 gundahs portion was awarded to the heirs of Deer Raee, and to the others 2 annas 8 gundahs; the son of Kasa Raee died without issue. The four remaining sons held 12 gundahs each. Formerly the appellants complained in the foujdarry against him, Peertee Raee; the magistrate affirmed his possession under order passed on the 9th September 1824, from which period he has been in uninterrupted possession of the 16 gundahs portion; that he had applied to the collector for the partition of this 16 gundahs, and Paltoo Raee and others, of the issue of the second wife, also applied for the partition of their share of 12 gundahs within the 2 annas 8 gundahs. The appellants, by petitions, objected to the partitions taking place, but the collector and the revenue commissioner rejected their request.

Paltoo Raee and four others filed a similar answer to the above.

The moonsiff dismissed the case on the following grounds: although three witnesses deposed to the appellants being in possession, yet from the evidence of ten witnesses, adduced by the respondents, being proprietors and putwarry of the village, and from inspection of a former lease, dated 2nd October 1821, granted to Kooda Buksh Sepee, it is proved the respondents are in possession, agreeably to the allegations in their answers, and that the appellants have not held possession from the passing of the foujdarry proceeding, dated 9th September 1824; from that date two twelve years have lapsed, hence it falls under the rule of limitation.

Against this decision the appellants urged the decision was passed contrary to the circumstances of the case. As the decision of arbitration, document of the shares, or the document of the adoption were not filed, and on the mere representation of the respondents, it is not proper for the court to confide. The lease filed is fabrication.

COURT.

The documents, which they (appellants) consider should have been filed by the respondents to establish their allegations, do not appear necessary. The first point of enquiry is, how and when the plaintiffs (appellants) were dispossessed, which is not clearly mentioned in the plaint. The allegations of the respondents, in their answer to plaint, regarding their present possession and shares, are borne out by the evidence of several witnesses, who are proprietors in the said village, and also by Girdaree Singh, one of the three witnesses adduced by the appellants, and is fully corroborated by the document filed by the respondents. Copy of the proceeding passed by Mr. Moore, magistrate, dated 9th September 1824, from which it appears,

prior to that date, litigations for dispossessions were carried on by the present parties. The proceeding defines the distinct shares of the respective persons, and they were held by them as separate puttees, since which time more than twenty-four years have elapsed. Therefore, ordered, the appeal be rejected, and the decision of the moonsiff be affirmed.

THE 26TH JANUARY 1849.

No. 351.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 17*th May* 1847.

Chowdhrey Rampershaud Singh, (Plaintiff,) Appellant,

versus

Runglall Jha, (Defendant,) Respondent.

THE appellant instituted this suit to recover from the respondent Company's rupees 2-2, as arrear of rent due from him from 1253 to 8 annas instalment of 1254 Fuslee, on the cultivation of 4 beegahs and 6 biswas of land, in village Deewarkeepore, principal and dependencies, pergunnah Nyepore, of which village the appellant declares himself proprietor of 3 annas and 4 gundahs share by auction purchase, the rights and interests of Soorajooddeen, which were sold under decree of court. After deduction of the portions of the other proprietors he sues for his own share of the rent.

Respondent, in answer to plaint, alleged: the year in which the appellant purchased the rights and interests of Soorajooddeen, that person had no share in the village; within 16 annas of the said village, 3 annas 3 gundahs share appertains to Shah Hossein Buksh and others, 2 annas 1 gundah to Kucker Jha, by purchase, 6 annas share to Burkt Tagoor, 2 annas 5 gundahs to Baboo Rampurshaud Singh, by purchase, 2 annas 11 gundahs to Beebee Khanum Jan, by purchase; they all hold possession of their respective shares, with the exception of Shah Hossein Buksh and others, their share was leased from 1250 F. S. to Beharee Matoon: that he had paid his rent to the lessee. The appellant had no concern in the village.

Beharee Matoon filed a third party petition, urging: the appellant has no concern in the village, has never been in possession, for Shah Soorajooddeen had no rights and interests in the village; that the share of Shah Hossein Buksh and others, 3 annas and 3 gundahs, was leased to him from 1250 to 1256, which has been established by decisions of court, dated 2nd and 18th February 1847.

The moonsiff dismissed the suit on the grounds that the appellant, in reply to answer, stated the respondent had given him a kubooleeut, which was not filed, and the evidence of one witness, whose deposition was taken, is not sufficient to prove any suit.

The appellant against this decision urged: the pottah, kubooleeut, and sundry other documents were ready, but the decision of the case was hastily passed, whereby he was unable to file them, and the moonsiff did not take the evidence of one of his witnesses.

COURT.

The moonsiff under proceeding, dated 8th April, directed both parties to adduce their respective proofs in eight days, and did not pass the decision in the case until the 17th May following, that is, after an elapse of one month and nine days, in which interval there was ample time to file the kubooleeut, which should have been done, at the time the list of witnesses was filed. With respect to the witnesses, the first return made on the back of the subpœna, one witness only was pointed out, and that witness was taken charge of by the plaintiff (appellant,) the evidence of that witness was subsequently taken, and the attorney for appellant promised on the 28th April to bring the witnesses himself in four days, and again on the 1st May the attorney promised to bring them in eight days. The subpœna was re-issued and witnesses attended, their evidence could not be taken, the attorney on the part of the appellant being absent; the witnesses applied to return to their homes; when they were gone, the attorney attended. All the witnesses should have attended at the same time, in order that their evidence should be taken on the same day, to prevent the possibility of the first witness tutoring the others. Under these circumstances there is no cause for meddling with the decision of the moonsiff. Therefore, ordered, the appeal be rejected, and the decision of the moonsiff be affirmed.

THE 26TH JANUARY 1849.

No. 352.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Begoo Surai, dated 10th May 1847.

Chowdhrey Rampurshad Singh, (Defendant,) Appellant,

versus

Becharee Matoon, (Plaintiff,) Respondent.

THE respondent sued for the reversal of a summary suit decision passed by the assistant collector of Monghyr, dated 23rd June

1846, and for payment of Company's rupees 1-5-6, arrear of rent of 12 annas instalment of 1253 Fuslee, on 2 beegahs, 19 biswas of land, cultivated by Rhabbee Sudda, one of the defendants, who was a cultivator within the 3 annas and 3 gundahs share of the village Duwarkeepore, pergunnah Nyepore, which share appertains to Hoosein Buksh and others, and was leased to the respondent from 1250 to 1256 Fuslee, on an advance of rupees 115. The aforesaid ryut having continued to pay his rent to 1249 to the lessors, and from 1250 to 1252 to the lessee, failing to do so in 1253 Fuslee, the lessee, respondent, distrained the property of the ryut, who filed a summary suit petition in the collectorate of Monghyr, declaring he had paid the rent of 1253 Fuslee to Chowdhrey Rampurshad Singh; hence arose the summary decision passed by the assistant collector, and this suit against the ryut, and the declared receiver of the rent.

The appellant, in answer to plaint, alleged: he had purchased at auction 3 annas and 3 gundahs share, being the rights and interests of Shah Soorajooddeen in the village, that subsequent to the purchase the ryut had taken a pottah for the land from him. The respondent's lease is irregular, for the lessors have no share in the village.

Rhabbee Sudda acknowledged the claim of the respondent, and alleged he did not file a petition against the distraint, nor did he attend at the collectorate. The petition in his name may have been filed by Chowdhrey Rampurshad Singh, who has no concern in the village.

The moonsiff passed a decision in favor of the plaintiff (respondent) against Rhabbee Sudda, who acknowledged the claim, and exempted Chowdhrey Rampurshad Singh from liability; that in this case it is not necessary to enter into the investigation of the objection urged by Chowdhrey Rampurshad Singh. The summary decision of the assistant collector is reversed.

Against this decision the appellant urged the moonsiff had not made any enquiry into his objection, and hoped the appeal plaint filed in case No. 351 would be deemed sufficient for this case also.

COURT.

The moonsiff has reversed the summary decision without assigning any reason for so doing, and has not, in conformity to Section 10, Regulation XIV. of 1824, called for the case from the collectorate of Monghyr, to be filed in this case, to ascertain therefrom whether or not the decision passed by the assistant collector was grounded on just proofs adduced, whereby the investigation of this case is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation *de novo* on the points above cited. The amount of stamp of appeal plaint be returned to the appellant.

THE 26TH JANUARY 1849.

No. 353.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 10th May 1847.

Chowdhrey Rampurshad Singh, (Defendant,) Appellant,

versus

Beeharee Matoon, (Plaintiff,) Respondent.

THIS case is similar to case No. 352, with this difference, the amount of rent sued for in this, is Company's rupees 1-7, on 5 beegahs and 19 biswas of land, and the name of the ryut is Gunnee Sudda.

The judgment in this case is the same as that passed in the case No. 352.

THE 26TH JANUARY 1849.

No. 354.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 10th May 1847.

Chowdhrey Rampurshad Singh, (Defendant,) Appellant,

versus

Beeharee Matoon, (Plaintiff,) Respondent.

THIS case is similar to case No. 352, with this difference, the amount of rent sued for in this, is Company's rupees 3-2-1, on 9 beegahs and 16 biswas of land, and the name of the ryut is Juggernath Sudda.

The judgment in this case is the same as that passed this day in the case No. 352.

THE 26TH JANUARY 1849.

No. 355.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegoo Surai, dated 10th May 1847.

Chowdhrey Rampurshad Singh, (Defendant,) Appellant,

versus

Beeharee Matoon, (Plaintiff,) Respondent.

THIS case is similar to case No. 352, with this difference, the amount of rent sued for in this, is Company's rupees 1-7-3, on 4 beegahs and 6 biswas of land, and the name of the ryut is Rung Lall Jha.

The judgment in this case is the same as that passed this day in the case No. 352.

THE 26TH JANUARY 1849.

No. 578.

Regular Appeal from a decision passed by Mr. Samuel DaCosta, Acting Moonsiff of Teegra and Beegco Surai, dated 9th August 1847.

Chowdhrey Rampurshad Singh, (Defendant,) Appellant,

versus

Beeharee Matoon, (Defendant,) Respondent.

THE plaint in this suit is similar to that in case No. 352, with this difference, this is to recover rupees 1-4-3, arrears of rent from Bhedasee ryut, on the cultivation of 4 beegahs, 9 biswas, and 2 dhoors of land.

The ryut, in answer to plaint, alleged the rent had been paid to Chowdhrey Rampurshad Singh, that the respondent had no concern in the village, and that he never had paid rent to the lessor, nor to the respondent.

The appellant, in answer to plaint, alleged the respondent had no concern in the village, and that the ryut had paid him rent from the time of his auction purchase of the rights and interests of Shah Soorajooddeen.

Fukeera Matoon and Munoo Matoon filed a third party petition, urging that they are sharers within the shares of Hossein Buksh of 2 annas and 15 gundahs, and Sheik Buddee of 8 gundahs, by purchase under bill of sale, dated 5th February 1845, the shares being in the possession of the lessee, Beharee Matoon, they have not been yet let into possession.

Beebee Zenut and others, heirs of Hossein Buksh, filed a third party petition, urging that the 3 annas and 3 gundahs share is leased to Beeharee Matoon, the respondent, which share was established to appertain to Hossein Buksh by decree of court, which is forthcoming.

The acting moonsiff passed a decision in favor of the plaintiff (respondent) making Bhedasee Sudda ryut responsible for the rent in conformity to Construction No. 696, evidence of witnesses having proved the respondent had received rent from the ryut, with the costs of suit chargeable to the ryut, exempting Chowdhrey Rampurshad Singh from liability; that enquiry into the proprietary right of Chowdhrey Rampurshad Singh could not be entered into in a suit for rent.

Against this decision the appellant urged that neither the respondent nor the lessor have any concern in the village, and that the decision of the moonsiff is erroneous, being passed on the evidence of witnesses, the circumstances of whose evidence are mentioned in the appeal plaint of Bhedasee Sudda, which is available in this appeal. The judgment in this case is the same as that passed in case No. 352.

THE 26TH JANUARY 1849.

No. 579.

Regular Appeal from a decision passed by Mr. Samuel Da Costa, Acting Moonsiff of Teegra and Beegoo Surai, dated 8th August 1847.

Bhedasee Sudda, (Defendant,) Appellant,

versus

Becharee Matoon, (Plaintiff,) Respondent.

THIS is an appeal against the decision of the moonsiff, noticed in case No. 578, alleging that the instalment of rent sued for by the plaintiff (respondent) was paid to Chowdhrey Rampurshad Singh, and the rent subsequent thereto was paid under a decree obtained by Chowdhrey Rampurshad Singh. The witnesses, adduced by the respondent in this case, having acknowledged in the summary case, that Chowdhrey Rampurshad Singh was in possession, their false evidence should not be depended upon, and the decision of the moonsiff is wrong. The judgment in this case is the same as that passed in the case No. 352.

THE 26TH JANUARY 1849.

No. 359.

Regular Appeal from a decision passed by Moulvee Syed Munneer-ooddeen Hossein, Moonsiff of Mhowah, dated 13th May 1847.

Dowun Racc and three others, (Defendants,) Appellants,

versus

Godun Singh and Gumboo Singh, (Plaintiffs,) Respondents.

THE respondents instituted this suit against the appellants to recover the sum of Company's rupees 59-8-10, as arrears on bhowlee, or kind rent, from 1251 to 1253 F. S., on the cultivation of 3 beegahs, 1 biswas, and 4 dhoors of land in village Bissenpoor Rugo *alias* Dundooah, chukla Gorejole, pergunnah Bisarah. In the plaint is stated the village is partitioned into 12 puttees, or shares, one of them is named Puttee Khaus, within which the share of the respondents is distinctly held by them, within that land the defendants (appellants) are cultivators, and will not pay their rent.

The appellants, in answer to the plaint, allege the respondents have no distinct share from the other proprietors of the 12 puttees, or shares, that their cultivation is for the proprietors jointly, their bhowlee, or kind rent, has been paid to the amlah of the proprietors, and receipts thereof obtained from the putwaree; owing to the demise of the former putwaree, the respondents have colluded with the present putwaree, caused alteration of the papers, and instituted this suit.

Achumbit Singh filed a third party petition, which is in corroboration of the answer to plaint.

Phukoo Singh and sixteen others, proprietors within the 12 puttees, or shares, filed a third party petition, which is in corroboration of the statement of plaint.

Chutter Singh and Raj Kooar Singh, proprietors within the 12 puttees, or shares, filed a third party petition, also in corroboration of the statement of plaint.

The moonsiff passed a decision in favor of the plaintiffs (respondents,) on the grounds: the plaint is proved by the jumma-wasil-bakee accounts filed by the putwaree, the evidence of the putwaree and of other witnesses, together with the statements made in the second and third petitions filed by the third parties.

Against this decision the appellants urge: the putwaree, who filed the accounts and gave evidence, was not the putwaree who gave them the receipts, for he was not putwaree in 1253 Fuslee, into which circumstance the moonsiff made no enquiry, and the third parties have colluded with the plaintiffs (respondents) against them.

COURT.

The point of objection of the appellants is, that the receipts given them by the former putwaree were not enquired into. If they had wished to have filed the receipts, they should have done so, when they filed a list of their witnesses; not having done so, they are inadmissible now. From the accounts and evidence of witnesses and nineteen proprietors of the village in their third party petitions, having corroborated the statement of the plaintiffs (respondents,) that the land cultivated by the appellants is distinctly held by the respondents, there is every reason to believe the decision of the moonsiff to be correct. Therefore, ordered, the appeal be rejected, and the decision of the moonsiff affirmed, with costs of both courts chargeable to the appellants.

THE 27TH JANUARY 1849.

No. 274.

Regular Appeal from a decision passed by Syed Ushruf Hossein, Second Principal Sudder Ameen of Mozufferpore, dated 24th March 1846.

Baboo Futtee Chund Sahoo, (Defendant,) Appellant,

versus

Ram Churrun Doss, farmer, and Ajoodeeah Doss, surety, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents against the appellant for the possession of village Poosee, paying revenue to Government, and village Deehoghur, nankar or rent-free, village, both villages

situate in pergunnah Bhachore, and for the reversal of the proceedings passed by the magistrate, under date 18th November 1843, and that of the sessions court, dated 8th February 1844, which affirmed the magistrate's order. The amount of action, together with the mesne profits, is laid at Company's rupees 2,938-10-8.

The plaint states, the abovementioned villages are the property of Raja Seereedur Narain Singh, who leased them to one of the respondents, Ram Churrun Doss, on the surety of the other respondent, Ajoodeeah Doss, from 1251 to 1258 Fuslee, on advance of rupees 1,000, the lessee paying an annual rent of rupees 801, to the lessor; subsequently another lease of the said villages was granted from 1259 to 1262 Fuslee. After completion of the deed of the first lease, rupees 200 were paid in part of the rent to the lessor; but on taking charge of the lease, was opposed by Baboo Futtee Chund, under the plea of holding a lease of the said villages to 1254 Fuslee. This dispute was brought before the magistrate under Act IV. of 1840, who passed an order to put Baboo Futtee Chund, appellant, in possession. On appeal to the sessions court, the order of the magistrate was affirmed. Now the lease of Baboo Futtee Chund was to 1250 Fuslee only, after the expiration of that lease to the plaintiffs (respondents) the lease abovementioned was given. Yet Baboo Futtee Chund alleged he had a lease of the villages to 1254 Fuslee, which document he is unable to adduce under the plea it was burnt, hence the cause of this suit.

The appellant in answer to the plaint alleged: the statement of the plaintiffs (respondents,) that the lease to him of the villages was to the year 1250 Fuslee only, is wrong. Although his lease to the year 1254 has been burnt, but in the kyfeeut dehaut, or representation of the villages appertaining to the aforementioned Maha Raja, which was filed by Soonker Koomar, mooktar (or agent) in the collectorate in the year 1249 Fuslee, his (appellant's) name will be found inserted as lessee of the villages under dispute to the expiration of the year 1253 Fuslee. This document, being filed three years prior to the date of the lease to the plaintiffs (respondents,) proves the theeka burnah pottah (or lease for the realization of the debt from the resources of the land) was granted to him (appellant) to the year 1253 Fuslee. The plaintiffs' (respondents') having obtained a lease within the unexpired term of his (appellant's) lease was wrong.

Musst. Ranee Girjaputtee and Surmuttee, heirs of Raja Seereedur Narain Singh, deceased, in answer to plaint allege that a theeka burnah pottah was granted to Baboo Futtee Chund Sahoo to the year 1254 Fuslee, and that within the term thereof, at the request of the plaintiffs (respondents) a lease was granted them from 1251 to 1258 Fuslee, whereupon (the villages being in possession of Baboo Futtee Chund Sahoo) the plaintiffs (respondents) wrote a letter to the Raja, relinquishing claim to the profits of the lease from 1251 to 1254 Fuslee.

The second principal sudder ameen passed a decision in favor of the plaintiffs (respondents,) on the grounds that the statements of Baboo Futtee Chund Sahoo and of the females, together with the evidence of their witnesses, are all false. From the acknowledgment of the females, in their answer to plaint, it appears the lease to the plaintiffs (respondents) is true. Neither the lease nor the counterpart thereof, on which Baboo Futtee Chund rests his claim to possession of the villages, is filed, from which it is suspected his lease expired in the year 1250 Fuslee. The document filed by the females appears to have been erased. The possession and mesne profits to be made over and paid by Baboo Futtee Chund. Costs of suit to be paid half and half by the defendant (appellant.)

Against this decision the appellant urges: the matter of the lease and the term thereof are not imperfect, being proved by their bank books; if the respondents obtained a lease within the term of his own, that is not his fault. His lease was burnt, and the females will not file the counterpart thereof, having colluded with the respondents.

The respondents, in their answer, allege that the appellant has not produced the original lease under the plea it has been burnt, and Musst. Ranee Girjaputtee has acknowledged granting the lease, but has not filed the counterpart thereof from which their allegations are incorrect. In some of the papers filed, the lease is to the year 1253, in others to the year 1254, which shew the falsity. The books produced are from the appellant's own house, written by his own gomastah, cannot be admitted as proof in his own behalf. The evidence of the appellant's witnesses and the appellant's statement regarding the period of the lease differ.

Court.

The matter of contest between the parties is, which is entitled to the possession of the villages under dispute, for both claim the right under a separate lease given to them respectively by the proprietor of the villages. The respondents having filed the leases, mentioned in their pleading, which are acknowledged by the heirs of the late lessors. The appellant could not file his lease, by reason of its having been burnt, and the counterpart thereof could not be produced, having been stolen, but in proof of his allegations filed a list of witnesses, copy of the representation of the villages appertaining to the lessor, which had been filed in the collectorate in the year 1249 F. S., and caused to be brought his own bank books, from which an extract was taken and filed. The females, heirs of the late lessor, in proof of their allegation, filed a list of witnesses and the original letter alleged to have been written by the respondents (denied by them) relinquishment of claim to the profits of their lease from 1251 to 1254 Fuslee, four years.

Books of a banker are admissible in court in proof of payments and receipts of money, but not to establish the validity of the trans-

action of a lease. From the extract from the book of the appellant's bank, it is observable there were some collections made from the villages under dispute, in the years 1242 and 1243 Fuslee, although clearly not stated that those villages were in those years leased to the appellant, yet the evidence of the witnesses, on the part of the respondents, and also from the evidence of witnesses, adduced by the appellant, it is proved the villages had been leased to the appellant from 1242 to 1250 Fuslee, and the appellant's witnesses further deposed that another lease for the same villages was granted to the appellant from 1251 to 1254 Fuslee. One of the two witnesses adduced by the appellant, named Beekhun, deposed, the last lease was written in 1244 Fuslee. The original document of the villages appertaining to the lessor filed in the collectorate, was called for in order that this court might compare the copy which is filed in this case, with the original, to ascertain the correctness or otherwise of the copy regarding the villages under dispute. The collector reports it is not to be found, having been mislaid. On inspection of the copy of the document filed of the villages of the lessor under the head of lessee, the name of the appellant is written to both of the villages, under head of amount of advance, blank to both, under head of remarks, with a slight difference in style, but to the same purport to both villages is inserted. Beginning, to 1253 year, burnah to Futtee Chund banker aforesaid. To a very great number of other villages that have been leased, the amount advanced is inserted, and the year of commencement of the lease as well as the termination thereof are stated. The omission of these particulars of the villages under dispute causes a suspicion that no written lease was granted. The witnesses adduced by the females deposed that the last lease granted to the respondents, that is from 1259 to 1262, and the letter of respondents relinquishing claim to the profits of the lease of the villages for four years, were written at one and the same time. The lease is dated 1st of Sawun 1st of 1251, and letter is dated 24th of Sawun 1st of 1251. There is a difference of twenty-three days, their evidence cannot be depended upon.

The appellant, in his answer to plaint, made no acknowledgment or denial of the statement in the plaint that he had a lease of the villages to 1250 only. The respondents' witnesses and his own proved he held a lease of the villages to 1250 Fuslee, and his own witnesses further deposed, that he obtained a subsequent lease of the said villages from 1251 to 1254, but his answer states to have been from 1244 to 1253 Fuslee. This discrepancy together with the omissions pointed out above, of necessary particulars in the copy of the document of the villages appertaining to the lessors, shew no written lease from 1244 to 1253 was granted, consequently, the decision of the second principal sudder ameen must be upheld. Therefore, ordered, the appeal be dismissed, with costs of this appeal chargeable to the appellant, and the decision of the second principal sudder ameen is affirmed.

THE 27TH JANUARY 1849.

No. 275.

Regular Appeal from a decision passed by Syed Ashruff Hossein, Second Principal Sudder Ameen of Mozufferpore, dated 24th March 1846.

Baboo Futtee Chund Sahoo, (Plaintiff,) Appellant,

versus

Ramp· lessee, Ajoodeeah Doss, surety, and Ranee Girja-p· ''aja Seereedur Narain, deceased, (Defendants,)

·l this suit against the respondents to ..ay's rupees 365, 8 annas, being the princi- ..ss of profits arising from suspension of pos-se. ·the villages Poosee and Dehoghur, in pergun-nah . ..ur months, from Kartick to Maugh, in the year 1251 .. ..is, from the date of the proceeding passed by the magistrate.. ..cting to put the appellant in possession to the date the session c..urt affirmed the order of the magistrate.

The respondents, Ram Churrun Doss and Ajoodeeah Doss, alleged, in answer to plaint, that the proprietor having given them a lease of the villages from 1251 to 1258 Fuslee, it was not their fault if the appellant was dispossessed.

The Ranee allowed the ca· ·· by default.

The second principal · ··n dismissed the case, on the grounds passed in his d· ··n case No. 274.

The appellant refe· ·ase No. 274, as sufficient for this case.

The respondents · ·er to the appeal in case No. 274, as suffic·

The judgment passed in· 4, shews the claim of the appellant to possession of the v· ..as not admitted, consequently, the claim to profits arising from possession is erroneous. Therefore, ordered, the appeal be dismissed, with costs of both courts chargeable to the appellant. The decision of the second principal sudder ameen is affirmed.

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ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 28TH FEBRUARY 1849.

Case No. 201 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Kundera, Mirza Ushkuree Fikrut, July 24th, 1848.

Kooraram Hajura, Nubin Rae, and Seetanath Sutgope, (Defendants,) Appellants,

versus

Ramjoy Pal, (Plaintiff,) Respondent.

THIS suit was instituted on the 7th February 1848, to recover from the defendants (appellants,) and two others, the sum of Company's rupees 19-5-3, being the balance of an account for *goor* (raw sugar) delivered to them by the plaintiff on the 30th Bysakh 1254 B. S.

The defendants, Kooraram Hajura and Nubin Rae, in answer, acknowledged the transaction, and pleaded payment in full.

Five witnesses, who were subpœnaed on their part, attended the moonsiff's court on the 3rd June 1848; but they were not examined, it appears, because the moonsiff was about to proceed on leave of absence, and a *mochulka*, or personal recognizance, was taken from them by the nazir of the court, requiring them to continue in attendance. On the 12th July, the moonsiff called upon the defendants to produce their witnesses; and they having failed to do so, he decreed the suit, without alluding to the above facts, in favor of the plaintiff.

The taking of a *mochulka* from witnesses, in a civil suit, is unauthorized by law; and as the defendants' witnesses could not be expected to re-attend without further notice from the court, the moonsiff, in my opinion, should, under the circumstances of the case, have required the subpœna to be issued afresh. I therefore remand the case to him, with directions to adopt that course, and decide the suit *de novo*.

THE 28TH FEBRUARY 1849.

Case No. 205 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpore, Moulvee Atta Alee, July 26th, 1848.

Syud Shah Hydur Hossein and Thakoor Das Bhandaree, (Plaintiffs,) Appellants,

versus

Bipro Churn Mundul, Thakoor Das Bhandaree, Khettronath Bhandaree, Seebnarayun Ghose, and others, (Defendants,) Respondents.

THIS suit was instituted on the 16th July 1847, to recover the sum of Company's rupees 2-5-4, arrears of rent.

The plaint sets forth that mouzah Bushuhuree in pergunnah Jynojul, was acquired by plaintiff, Shah Hydur Hossein, in 1249 B. S., in which year he sold a 12 annas share in putnee to the defendant, Bipro Churn Mundul. He, at the same time, made over to the said Bipro Churn Mundul the rents of the remaining 4 annas share, from 1249 to 1257, under a deed of assignment, in payment of debts, reserving to himself the *puteet-abadee* lands as his own exclusive right; that on the 16th Chyte 1249, the defendant, Thakoor Das Bhandaree, engaged 39 beegahs of the said *puteet-abadee* lands at a *mokururee*, or fixed rent, of Company's rupees 10-6-4, under a *kubooleeut* executed in the name of his son, Khettronath Bhandaree, in favor of plaintiff, Shah Hydur Hossein, and defendan, Bipro Churn Mundul, jointly; that the rent due from the defendant, Thakoor Das Bhandaree, from 1249 to 1253, amounted on Shah Hydur Hossein's share to rupees 10-6-4, of which he had paid 9 rupees, leaving a balance of rupees 1-6-4. Shah Hydur Hossein therefore instituted this suit in conjunction with his agent, the plaintiff, Thakoor Das Bhandaree, to recover from the defendant, Thakoor Das Bhandaree, the said balance with interest,—making Bipro Churn Mundul and the zemindars and others defendants in the suit.

The defendant, Bipro Churn Mundul, in answer, pleaded that the plaintiff, Shah Hydur Hossein, leased to him the 4 annas share, for the period stated, without reservation, and as he (defendant) had possession, the suit, in its present shape, was untenable; that the *kubooleeut* executed by the defendant, Thakoor Das Bhandaree, was drawn up in plaintiff's name with plaintiff's concurrence in order to give it stability, it being on terms of perpetuity: it conferred no right on plaintiff to receive the rent as long as his (defendant's) lease continued; and that the ryut, Thakoor Das Bhandaree, had paid the rent to him in full.

The defendants, Thakoor Das Bhandaree and Khetronath Bhandaree, filed an answer to the same effect, stating that the plaintiffs took from them the 9 rupees mentioned in the plaint by force.

The moonsiff decided that under the terms of the lease, a copy of which was filed on the part of the plaintiffs, they (plaintiffs) had no right to the rent sued for; and he therefore dismissed the suit with costs.

In a suit for rent it was irregular to enter into the question of right. The moonsiff should have restricted himself in the first instance to the plea advanced in the answers, as to who was in possession, receiving rent from the ryut, and have nonsuited the plaintiffs, if he found that they were not in possession, thus leaving them at liberty to prosecute their claim, if they thought proper to do so, on the full value of the interests involved in the dispute. I accordingly remand the suit to the moonsiff for revision with reference to the above remarks.

THE 28TH FEBRUARY 1849.

Case No. 206 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Ahmud, July 19th, 1848.

Muhesha Manjhee and Mirza Manjhee, (Defendants,) Appellants,

versus

Ram Narayun Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 28th March 1848, to recover from the defendants, the sum of Company's rupees 62-10-1, being the balance due on a bond, bearing date the 13th Srabun 1249 B. S., alleged to have been executed by them in favor of plaintiff, in acknowledgment of a loan of 45 rupees.

The defendants, in answer, denied the bond, stating that their father, Mohun Manjhee, deceased, had had dealings with the plaintiff, on account of which they executed a bond in plaintiff's favor, under date the 7th Srabun 1247 B. S., for 38 rupees, that they had paid the amount of that bond in full, and there was nothing further due from them.

The moonsiff rejected the evidence of the witnesses, adduced by the defendants, in support of the transaction mentioned in the answer, on the grounds that it was irrelevant to the matter at issue; and, considering the execution of the disputed bond duly proved by the evidence of the witnesses examined on the part of the plaintiff, he decreed the suit in his favor. And nothing having been advanced in appeal, calculated to affect the propriety of the decision, which is in conformity with the record, the judgment of the lower court is hereby confirmed.

THE 28TH FEBRUARY 1849.

Case No. 209 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut Sumeenooddeen Ahmud, June 30th, 1848.

Kalee Rajbungs and Loknath Thakoor, (Defendants,) Appellants,

versus

Gunesh Jha, (Plaintiff,) Respondent.

THIS suit was instituted on the 16th February 1848, to recover the sum of 29 rupees, with interest, being the amount of pecuniary consideration paid by plaintiff to the defendants, in the month of Phalgoon 1253 B. S., on their making with him a contract of marriage between his son and the defendant Kalee Rajbungs's daughter, which contract they afterwards broke by marrying the girl to another.

The defendants, in answer, denied the claim, stating that overtures had been made by plaintiff towards the marriage, but they were rejected in the presence of respectable people, who expressly asked him at the time, whether he had advanced any money on the occasion or not, and he admitted to them that he had not.

The defendants failed to produce evidence in support of their answer, and the moonsiff, finding the plaintiff's case proved by the evidence of five witnesses, who were present when the money was paid to the defendents, decreed the suit in his favor. And being of opinion, on perusal of the record and the petition of appeal, that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I hereby confirm it.

ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, ESQ., OFFICIATING JUDGE.

THE 5TH FEBRUARY 1849.

No. 18.

Appeal from a decision of the Principal Sudder Ameen, Moulvee Fuzzul Rubbee, dated 11*th September* 1848.

Gour Mohun Dutt, (Defendant,) Appellant,

versus

Gunga Mujoomdar and others, (Plaintiffs,) Respondents.

THIS is an action for possession, with mesne profits, laid at rupees 3119-4-15.

The plaintiffs state they possessed 25 beegahs of land in the village of Pingore on an hereditary mokurruree lease in perpetuity. In the month of Asar 1249 B. S., the appellant, Gour Mohun, in collusion with the late talookdar and others, forcibly ousted the plaintiffs, usurped the said land and the crops, and have continued to retain possession ever since.

The defendant (appellant) Gour Mohun replies that he did not oust the plaintiffs, that 18 beegahs 15 cottahs of the land claimed were sold to him, in Jeit 1246 B. S., by plaintiffs, who executed a deed of transfer in favor of his (defendant's) son, Jye Ram Dutt, that the sale proceeds were appropriated by plaintiffs to redeem 15 beegahs 8 cottahs of the said land mortgaged to one Ram Mohun Gossein, and the title deeds, when recovered from the said Gossein, were made over by plaintiffs to him, defendant.

The defendants, Sreeram and Jyeram, confirm this statement.

The defendant, Bindrabun Rae, replies that the plaintiffs were in possession in 1249 B. S., but in that year they voluntarily resigned their lease, when it was given to the defendant, Gour Mohun.

The principal sudder ameen very properly overrules the objections raised by defendants, first, as to the necessity of the putneedar being made a party to the suit; and secondly, that the insertion of the name of Nobin Chunder, the writer of the kuballa, as defendants entitle, them to a nonsuit. In the latter case, the defendants altogether fail to prove that the intention in making Ram Chund Nundee and Nobin Chunder defendants was fraudulent. The fact of plaintiffs having enjoyed possession from time immemorial of 25 beegahs of land at a fixed rate of 12 rupees annually, is not disputed. Their right is supported by a decree (683) of court given on 19th November 1812. The point for adjudication is, whether they did alienate that

right to Gour Mohun Dutt, defendant, in the manner stated by him or not. From the inquiry conducted on the spot by the moonsiff of Suleemabad, it is evident that plaintiffs were in undisturbed possession till 1249 B. S. That they voluntarily relinquished their lease in that year, as represented by the defendant, Bindrabun, is unworthy of credit. The isteefa and accounts he files are not certified; and it is beyond probability that plaintiffs should have given the former document on the plea set forth, as the jumma was almost nominal, and the lands of a superior description, and had been in plaintiff's family for several generations. The deed of transfer, filed by Gour Mohun, is not registered: two out of three of the attesting witnesses, who certify to its truth, can neither read nor write; and their testimony cannot be credited. The signatures of Jadub Chunder and of Gunga Govind plaintiffs do not correspond with those affixed to the wakalutnamahs filed in the suit, and there is every reason to suppose that Jadub Chunder was a minor in 1246, when the deed is stated to have been executed. Further it is unworthy of belief that Gour Mohun should have paid 451 rupees for 18 beegahs 15 cottahs of mokurreree land, and neglect the obvious precaution of securing some documents to prove his title in the event of the talookdar attempting to enhance the rent. The defendant Gour Mohun's statement that the mortgage deeds, when recovered from the Gossein, were given by plaintiffs to him, is also highly improbable. These bonds were of no value as evidence of the mokurruree; and he, Gour Mohun, would scarcely have been satisfied to receive them and omit to demand the document that was to prove the validity of his purchase.

For these reasons, I concur in the finding of the lower court. The appellant shews no grounds why the award for wasilat should be disturbed. The appeal is accordingly dismissed without serving a notice on the respondents, and the principal sudder ameen's decision affirmed.

The 8th February 1849.

No. 89.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 23rd February 1848.

Omes Chunder Roy and Ram Gopaul Sircar, (third parties,) Appellants,

versus

Surbo Chunder Roy, subsequently Chunder Mohun Roy, (Plaintiffs,) Respondents.

This is an action for a balance of rent from 1251 to Asin 1253 B. S., amounting, with interest, to rupees 68-15-12-2.

The plaintiff states that he is durputneedar of lot Soorujpore, in virtue of purchases made at various periods; that the defendants are defaulters to the extent above shewn in the said estate. The defendants allow the suit to go by default. The appellants are third parties, who lay claim to the estate, one to a 10 annas, 13 gundahs 1 cowree, 1 kranth portion of it, in virtue of an absolute deed of sale made by the former proprietors; the other, to the whole in right of mortgage, which he has sued to foreclose. The moonsiff has limited his decision to the question of rent, and decrees for plaintiff, leaving the third parties to seek their redress in the usual manner. The third parties, in appeal, reiterate the pleas made in the lower court. It appears from the record of the case that the claims of the appellant, Omes Chunder, were over-ruled by the moonsiff, Naziroodeen, who originally tried the suit. That officer recorded his judgnent in favor of plaintiffs, who were nonsuited in appeal, they (plaintiffs) having forfeited their right to sue on stampt paper of 1-4th value by inserting the name of the former malik as a defendant. The plaintiffs again filed another on stampt paper of full value, but were again nonsuited, the claimant not having been made a party to the suit. In appeal from this decision, however, the case was remanded with instructions to dispose of it on its merits with reference only to the claim for *rent*; and from this order a special appeal was preferred by Omes Chunder, the third party, to the Sudder Court, who affirmed the decision of the judge. The claims of the said Omes Chunder, therefore, have been finally disposed of as far as this suit is concerned and need not be entered on again. The other claimant, Gudadhur Trebedee, has filed a regular suit for his rights. I see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed with costs.

THE 8TH FEBRUARY 1849.

No. 97.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 23rd February 1848.

Emamoodeen Kazee, (Defendant,) Appellant,

versus

Surbo Chunder Roy, subsequently, Chunder Mohun Roy, (Plaintiff,) and Omes Chunder Roy, (third party,) Respondents.

THIS is a suit for arrears of rent, amounting, with interest, to rupees 94-8-10. The defendant replies that Omes Chunder Roy possesses two-thirds of the estate, and plaintiff one-third, and that he has paid the whole amount claimable.

The moonsiff overrules the claims of the third party, for reasons assigned in case No. 89. In respect to the pleas of defendant, he observes that the dakhilas are at variance with the facts stated in his reply, and that the gomastah denies that the signature attached is his. On the other hand, the accounts are certified by the gomastah and witnesses, from which the defendant appears to be a defaulter to the extent sued for. In appeal nothing is urged to lead me to differ with the lower court: its decision is therefore affirmed, and the appeal dismissed with costs.

THE 8TH FEBRUARY 1849.

No. 98.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 23rd February 1848.

Noor Mahomed Mondol and others, (Defendants,) Appellants,

versus

Surbo Chunder Roy, (Plaintiff,) and Omes Chunder Roy, (third party,) Respondents.

THIS is an action for rent, amounting, with interest, to rupees 149-15-5.

The particulars of this case are the same as those recorded in case No. 97, with this difference that the defendants are separate. For reasons therein assigned, the decision of the lower court is affirmed, and the appeal dismissed with costs.

THE 8TH FEBRUARY 1849.

No. 99.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 23rd February 1848.

Omes Chunder Roy and others, (third parties,) Appellants,

versus

Surbo Chunder Roy and Chunder Mohun Roy, (Plaintiffs,) Koylas Chunder Roy, (Defendant,) Respondents.

THE plaintiff sues for arrears of rent, amounting, with interest, to rupees 46-4.

The particulars of this case are identical with those recorded in case No. 89, the difference being in the party sued. For reasons therein assigned, the decision of the moonsiff is affirmed, and the appeal dismissed with costs.

THE 8TH FEBRUARY 1849.

No. 100.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 23rd February 1848.

Byragnath Roy and others, (Defendants,) Appellants,

versus

Surbo Chunder Roy and Chunder Mohun Roy (Plaintiffs,) and Omes Chunder Roy and others, (third party,) Respondents.

THIS is an action for rent, amounting, with interest, to rupees 109-0-6-3.

The particulars of this case are similar to those recorded in case No. 97, the defendants being different. For reasons therein assigned, the decision of the moonsiff is affirmed, and the appeal dismissed with costs.

THE 13TH FEBRUARY 1849.

No. 103.

Appeal from a decision of the Moonsiff of Pothna, Seetce Kaunt Singh, dated 23rd February 1848.

Noor Mahomed *alias* Manick, (Defendant,) Appellant,

versus

Sheik Ruffaatoollah, (Plaintiff,) Respondent.

THIS is an action to recover a debt, amounting, with interest, to rupees 13-8. The plaintiff states he lent the money in Asin 1253 B. S., to be repaid in one month; in failure thereof, interest was to be charged.

The defendant denies having borrowed any money, and states that the suit has been brought against him at the instigation of his enemy, one Gomanee.

The moonsiff places credit on the evidence of two witnesses, who were present when the money was given, and rejects that of defendant as to his plea of enmity. He thinks also the delay in filing the wakalutnamah and his reply are suspicious circumstances, and decrees for plaintiff.

The moonsiff's inquiry seems incomplete. One of the witnesses for plaintiff deposes that, on the day on which defendant borrowed the money from plaintiff, the latter granted him a loan also for which he likewise gave a note of hand. From this it is to be inferred that plaintiff was in the habit of granting loans, and consequently must have some record of this transaction in the shape of account-books. He should be called on to produce them in proof of the transaction involved in the present suit; and in failure thereof the truth or otherwise of his claim must in a great measure

rest. The appeal is admitted, and the case remanded to the moonsiff, who will proceed in the manner indicated above. The cost of stamp to be refunded in the usual manner.

THE 13TH FEBRUARY 1849.

No. 107.

Appeal from a decision of the Moonsiff of Ousgaon, Tuffuzool Ruhma, dated 19th February 1848.

Parbuttee Soondree Debeea, (Plaintiff,) Appellant,

versus

Sheik Shureeutoollah, (Defendant,) Respondent.

THE plaintiff sues to recover an arrear of rent ftom 1249 to 1253 B. S., amounting, with interest, to rupees 12-4-6.

The defendant replies that he and his uncle held a lease from plaintiff, the annual rental of which was rupees 14-0-11, but that he was only responsible for half that amount, and his uncle for the other half; that both he and his uncle, between 1248 and 1252 B. S., alienated, by sale, portions of their respective jummas. In 1252 defendant was liable for rupees 3-5-2; and this amount he paid in that year, but obtained no receipts. He states his readiness to pay at the same rate for 1253, provided no illegal charge for interest is made. Sundry third parties confirm defendant's statement.

Plaintiff, in support of his demand, files accounts for two years only, viz. 1249 and 1250; but these are only copies, not originals, and are not certified in any way. For the other years he files no proofs whatever.

The moonsiff rejects plaintiff's claim, but decrees in his favor to the extent defendant admits he is liable; and in this award I concur. The appeal is accordingly dismissed without serving a notice on respondent, and the decision of the lower court affirmed.

THE 19TH FEBRUARY 1849.

No. 109.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 21st February 1848.

Bistoo Ram and Kartick Chund, (third parties,) Appellants,

versus

Kalee Pershad Pattuck, (Plaintiff,) Mirtenjoy Baboo, (Defendant,) Respondents.

THIS is an action to recover a bond debt, amounting, with interest, to rupees 138-12.

Plaintiff states the defendant borrowed one hundred rupees on the 15th Bysack 1249, and executed a bond (to be redeemed in the

month of Chyte 1250,) pledging sundry real property as security.

The defendant denies the loan.

The third parties, Bistoo and Kartick, represent that the deed of mortgage is a forgery; that the lands, stated therein as having been pledged, were sold to them unconditionally on the 16th Bysack 1254 B. S., in proof of which they file two kuballas.

The moonsiff decrees for plaintiff, leaving it optional with the third parties to prefer their claim in the event of attachment of the land disputed in execution of decree, or to file a regular suit.

From this award the third parties have appealed; but, on a review of the proceedings, I see no reason to differ with the lower court. Its decision is affirmed, and the appeal dismissed without serving a notice on the respondents.

THE 19TH FEBRUARY 1849.

No. 113.

Appeal from a decision of the Moonsiff of Indoss, Naziroodleen Mahomed, dated 22nd February 1848.

Haredhun Gossaul *alias* Ramsoonder Gossaul and others, (Plaintiff,) Appellants,

versus

Peearee Monee Debeea, and others, (Defendants,) Respondents.

PLAINTIFFS sue for rupees 149-7, the amount for which defendants are liable as co-sharers, recovered from plaintiffs in execution of a decree. Plaintiffs represent that they held a lakhiraj estate in joint tenancy with the defendant Nuddiar Chand; each party possessing an 8 annas share. The talookdar filed a suit against the parties to resume under the provisions of Regulation II. of 1819, and obtained a decree. In suing it out for costs the plaintiffs' property *alone* was attached, when they deposited the whole amount in court, entering a demurrer at the same time, which was overruled, and they (plaintiffs) referred to a regular suit.

The defendants entered no reply, but a petition to the intent that they were not half sharers, but holders of 9 beegahs only, and as such they had paid plaintiffs their share of costs, viz. 57 rupees.

The moonsiff dismisses the case, because plaintiffs are unable to prove the extent of defendants' responsibility. The truth of plaintiffs' statement is however in a measure confirmed by defendants' petition, wherein they admit their liability; and the point therefore to be determined is the extent; and for this purpose the moonsiff should depute a trustworthy officer to ascertain what portion of the estate the defendants actually occupy, and proceed according

to the result of his inquiry. The moonsiff appears to have acted illegally in receiving a petition, which was treated as a reply, from the defendants, after the plaintiffs' exhibits had been filed. He should have decided the case *exparte*. The appeal is decreed, and the case remanded to the moonsiff, who will pursue the course above indicated. The cost of stamp to be refunded in the usual manner.

THE 19TH FEBRUARY 1849.

No. 142.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 15*th March* 1848.

Shama Soondree, (Plaintiff,) Appellant,

versus

Mirtunjoy Baboo and others, (Defendants,) Respondents.

THIS is an action to recover a bond debt, amounting, with interest, to Company's rupees 150. The plaint sets forth that the defendant Mirtunjoy borrowed one hundred rupees on 2nd Assin 1245 B. S., executing a bond, mortgaging sundry real property as security. The defendant confesses judgment as to part of the loan, but pleads that he has not received credit to the extent he has repaid.

Kalee Persaud Pattock, third party, pleads, as in case No. 109, that he holds a deed of mortgage from the defendant, pledging the identical property specified in plaintiff's bond, and that this suit has been brought in collusion with the defendants and Bistoo Ram and Kartick Ram, with a view to nullify his claim on Mirtunjoy.

Bistoo Ram and Kartick Ram, as third parties, urge their claims in virtue of the deeds of transfer, as stated in case No. 109.

The moonsiff observes that, although plaintiff represents the money to have been lent in 1245 B. S., he took no steps to recover it till September 1847, after a lapse of 8 years and 7 months, and *subsequent* to the institution of Kalee Persaud's suit against the defendant Mirtunjoy, in July of the same year. These circumstances and others, which he mentions, lead him to doubt the truth of plaintiff's claim and the validity of the document on which it is grounded; and he dismisses the case accordingly.

The appellant urges that the defendant having confessed judgment, the lower court was not warranted in dismissing the suit. I concur with the moonsiff in his conclusions. Plaintiff's intention in filing this suit is, no doubt, to nullify Kalee Persaud's bond, and to defeat the attempts of the latter to get possession of the real property, should Mirtunjoy fail to liquidate his debt. Though the defendant in this case confesses judgment, I question whether

any *bonâ fide* transaction of the nature described by plaintiff, ever occurred, or that a loan was ever made or received. The deed of mortgage is a very suspicious document, and, though dated 1245, has evidently been written recently; the ink is perfectly fresh, and the creases of the paper have been written over, which could scarcely have occurred if the purchase of the stampt paper and the execution of the bond in 1245 were simultaneous, as plaintiff would wish it to be believed. I see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 116.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd February 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS is an action to recover a balance of rent, principal and interest, rupees 15, 9 annas, 5 gundahs. Plaintiffs state the defendant holds a lease in Bundooteea village, paying a jumma of rupees 7-7½ annually, in the name of Sheik Baroo; and that defendant is a defaulter to the extent sued for on account of the years 1250, 1251, and 1252 B. S.

The defendant does not deny the lease or possession, but pleads that he is a defaulter for a part of the jumma of 1252 only; and that he holds receipts for the other sums claimed.

The moonsiff rejects defendant's proofs: *first*, because he is unable to certify the dakhilas; *secondly*, because the evidence of his witnesses, given in case No. 326, in which the appellant is likewise defendant, is opposed to the purport of a petition filed by defendant in the collector's court, bearing date 30th Bhadoon 1253, in which he (defendant) denies that he is in balance at all for 1252 B. S.; and *thirdly*, because, on the other hand, the accounts, duly certified by the gomashta, shew that defendant is a defaulter to the extent sued for.

On a review of the proceedings I see no reason to differ with the lower court. Defendant never made any reply till after the plaintiffs' exhibits had been filed. His pleas should not therefore have been taken into consideration. They are however unworthy of credit, as well as the testimony of his witnesses, opposed as they are to defendant's statement in his petition presented to the collector. The appeal is dismissed, and the decision of the moonsiff affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 117.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd February 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS is a suit to recover a balance of rent, principal and interest, rupees 17, 10 annas, 1 gundah. The features of this case differ in *no* way from those recorded in case No. 116, save and except that the lease is a separate one. For reasons therein assigned the appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 118.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd February 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS is an action to recover arrears of rent, amounting, with interest, to rupees 43-11-11.

The particulars of this case are the same as recorded in No. 116, except that the defendant (appellant) in this instance disputes the amount jumma for which he is liable; his other pleas are the same as in the case quoted. In support of his demurrer, regarding the jumma, he gives no proof, and the moonsiff overrules it, in which proceeding I concur. The appeal is dismissed, and the decision of the moonsiff affirmed, without serving a notice on the respondent.

THE 20TH FEBRUARY 1849.

No. 149.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 11th March 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS is a suit to recover rupees 50-10-13, arrears of rent.

This suit in no way differs from No. 116, it is not therefore necessary to record the particulars. For reasons assigned in the case

quoted, the appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 150.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 11*th March* 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS suit differs in no way from No. 116, except as regards the amount balance sued for. For reasons assigned in the case quoted, the appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 151.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 10*th March* 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS suit differs from No. 116, only in respect to the period for which the balance sued for is due, and to the pleas of defendant. In addition to those urged in the case quoted, he adds that the defendants associated with him hold separate leases and are separately responsible, but he fails to prove it. The appeal is dismissed for reasons already assigned, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 152.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 11*th March* 1848.

Dowlut Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THE particulars in this suit differ in no way from those recorded in case No. 116, except as to the amount jumma sued for. For reasons therein assigned the appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH FEBRUARY 1849.

No. 153.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 10th March 1848.

Sonaoollah Mullick, (Defendant,) Appellant,

versus

Bunmallee Samunt and others, (Plaintiffs,) Respondents.

THIS case differs in no way from No. 116, except that the lease is recorded in the name of defendant instead of that of Dowlut Mullick, his brother, who, defendant states, is in reality the tenant. For reasons assigned in the case quoted, the appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 27TH FEBRUARY 1849.

No. 125.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 28th February 1848.

Gopaul Gope, (Plaintiff,) Appellant,

versus

Bunmallee Samunt and others, (Defendants,) Respondents.

THIS is an action to set aside an award made under Regulation V. of 1812, and to recover compensation for loss caused thereby: laid at rupees 63. The appellant states he held 14½ cottahs of land, 10½ cottahs on his own account, and 4 on that of Byjnath, which in 1252 B. S. he cultivated in sugar-cane. The talookdars, the defendants, distrained the sugar-cane for a balance of rent as due from one Chota Nund Rae; on representation to the furosh ameen, the distraint was removed. The talookdar a second time attached the same sugar-cane, as belonging to one Wullee Sheik, a defaulter; and, on the 9th April 1846, the goor, the produce of the cane, was sold in satisfaction of the balances due by the said Wullee.

The defendants, the talookdars, deny that the land abovementioned formed any part of plaintiff's lease; that Chota Nund Rae was the tenant; that his crop of sugar-cane was attached, but subsequently released on his paying the balance due to defendants; that Wullee Sheik's sugar-cane was also distrained, but that the plaintiff forcibly carried off the crop.

The defendant Chota, Nund Rae reiterates what the other defendants reply.

The defendant, Wokeel Monee, the widow of Byjnath Dutt, replies that the 4 cottahs, which plaintiff represents as holding from her late husband, Byjnath Dutt, were granted in lease to Chota Nund Rae, for three years, viz. 1250, 1251, and 1252 B. S.

The moonsiff observes that the limits of the land disputed, as described in plaintiff's urzee, do not tally with those recorded in his petition of claim, preferred to the furosh ameen, in case No. 150, when Nund Rae's crop was attached at the instance of the defendants, talookdars. The quantity then claimed was in aggregate 1 beegah, 1 cottah in four different parcels; in the present instance the quantity is 14½ cottahs, in two plots, and cannot therefore be identical. There is no proof whatever to show that the produce sold in satisfaction of Wullee Sheik's balance was that of Nund Rae's land; on the contrary the records of the case No. 160, in which Wullee Sheik's property was distrained, prove according to the boundaries, which likewise do not tally with those stated in the plaint, that Wullee Sheik's lease was quite separate; and from a local inquiry it would appear that Chota Nund Rae was in possession of his lease during the years specified. For these and other reasons the moonsiff dismisses the case.

On a review of the proceedings I see no reason to interfere with the decision of the lower court; it is accordingly affirmed, and the appeal dismissed, without serving a notice on the respondents.

THE 27TH FEBRUARY 1849.

No. 140.

Appeal from a decision of the Moonsiff of Ousgaon, Tuffuzzool Ruhman, dated 14*th March* 1848.

Muddoosoodun Banoorjeea, (Plaintiff,) Appellant,

Gooroodoss Mujoomdar, (Defendant,) Respondent.

THE plaintiff sues to recover 219-7-5 rupees, principal and interest, on a promissory note, bearing date 23rd Srabun 1253 B. S.

The defendant denies the claim; and pleads, *first*, that he was absent at the time the promissory note is stated by plaintiff to have been executed; and *secondly*, that the real though not the ostensible plaintiff is one Pran Rae, who is the leader of a faction in his (defendant's) village at enmity with that over which defendant presides.

The moonsiff rejects the evidence of the witnesses attesting the promissory note as contradictory and unworthy of credit. The points elicited in the course of enquiry tend, the moonsiff observes, also to render the plaintiff's statement improbable; that the signature of the defendant affixed to the promissory note does not correspond with that on the wakalutnama; that the defendant could himself write, and consequently there was no occasion to employ a third party to draft the former; that the stampt paper, on which the promissory note is drawn, is endorsed to one Muddoosoodun Rae, who purchased it at Burdwan, from which he (the moonsiff) infers that had there

been a *bonâ fide* transaction, the defendant, the borrower, as is usual in such cases, would have supplied the paper, which most probably would have been purchased from the stamp vender close at hand, and not from Burdwan, some six coss distant; and finally, that he entertains no doubt from the evidence of witnesses that this suit has originated in enmity at the instigation of one Pran Rae, the leader of a party at feud with that to which defendant belongs.

In appeal the same pleas are urged as in the lower court. On a careful review of the proceedings I see no reason to differ with the moonsiff. The promissory note is attested by six witnesses; three only, however, appear, and two of the three can neither read nor write; and their identifying on oath the deed as the one which was executed in their presence, renders their testimony (which is otherwise worthless from the contradictions it contains) still more incredible. They likewise swear that the promissory note was drafted, signed, and attested at one and the same time; this again is unworthy of credit, as from the appearance of the deed there can be no question, from the color of the ink, that the signatures of the witnesses were affixed at different times. It is also highly improbable that the signature to the note, stated by plaintiff to be that of defendant, is his, as it does not correspond in any way either with that affixed to the wakalutnama, or with that written by the respondent, who happened to be present, and who was required by the appellate court to write his name. Concurring therefore in opinion with the moonsiff, the appeal is dismissed, and his decision affirmed, without serving a notice on the respondent.

ZILLAH WEST BURDWAN.

PRESENT: C. GARSTIN, ESQ., JUDGE.

THE 8TH FEBRUARY 1849.

Case No. 1 of 1848.

Appeal from a decision of the Moonsiff of Radhanagore, Moulvee Asudoollah, dated 29th November 1847.

Bhagout Khan, (Plaintiff,) Appellant,

versus

Shibboo and Fuqueer Johar, (Defendants,) Respondents.

Rupees 3-11, balance of kistbundee.

THE plaintiff states in this case that, having had dealings with the defendants, they compared accounts, &c., when the latter, being found 40 rupees in his bill, made arrangements for paying it off by instalments in three years, viz. from 1249 to 1251 B. S., at the rate of 12¼ rupees annually, and the balance 3-4 in the month of Poos 1252; that, for payment of the above sums, they made over certain ghatwallee lands belonging to Fuqueer, to a man named Nund Loll, who was to pay the kists as they fell due to the plaintiff; and in 1252, after paying him the 3-4 in balance, to give the rest to the defendants; that a kistbundee to the above effect was made and done by the defendants on the 22nd Phalgoon 1248; and its conditions were duly performed by Nund Loll up to 1251, when Fuqueer being dismissed from the ghatwallee, the balance was never paid, and he seeks in this suit to recover it.

The defendants appoint a vakeel to defend the case, but give no reply, and the moonsiff, on 29th November 1847, after completing his enquiries, dismisses the complaint. He remarks that the plaintiff has brought forward two witnesses, but one of them says he knows nothing about it, and as he (the moonsiff) does not consider one witness sufficient, he dismisses the case, making plaintiff liable for costs, &c.

Plaintiff appeals. He says that, although the defendant knew of the institution of the suit, and appointed a vakeel to conduct his defence, he took no further notice of it, which he would surely have done had he had a good case; that, although one of his witnesses had been bought over, there were others ready to give evidence, and whom the moonsiff might have sent for, had he so pleased; that the enquiry is incomplete, and his claim good, &c.

On looking over the papers in this case I observe that the plaintiff gave in a list of five witnesses, who all acknowledged the summons served on them, and were ready to give evidence in it; and I certainly think (particularly as the other party made no defence) that the moonsiff was bound to have examined them. As he has not done this, and has clearly been hasty in forming his opinion, I deem it but right to remand the case for further investigation, and have therefore decreed the appeal, reversing the moonsiff's orders, and remanding the proceedings with a view to further and complete enquiry, after which the case will of course be decided on its merits.
The usual order for return of stamp, &c.

THE 8TH FEBRUARY 1849.

Case No. 2 of 1848.

Appeal from a decision of the Moonsiff of Bishenpore, Moulvee Noorul Hossein, dated 6th December 1847.

Anund Loll, (Plaintiff,) Appellant,

versus

Rampersaud Singh, heir of Brij Loll Singh and others, (Defendants,) Respondents.

Rupees 32, to obtain possession of certain lands.

IN this suit the plaintiff states that a man named Brij Loll Singh (deceased,) on the 10th Maugh 1227, gave him a mokurruree pottah for 4 beegahs, 4 cottahs of his lakhiraj lands, lying in mouzah Hajeepore, (in different plots as detailed in his plaint,) to hold at a yearly rent, in kind, of 4 maps, 2 sullees and 13 seers; and that he accordingly obtained possession of and held them undisturbed on these terms till 1246 Jeit, when he (Brij Loll) made some other arrangements for them with the other defendants, when they turned him out and have ever since retained them; and, as they refuse to restore them, he now brings his suit, laying his claim as above.

Gooroo Churn Gour and other defendants reply, denying the justice of the claim made by plaintiff, and say that he never held the lands at all, and that the whole story is false, that Brij Loll Singh had in all, in Hajeepore and other places, 9 beegahs 15 cottahs of land, which he gave to Puteet Gour to cultivate, taking half the produce, and he in like manner gave it to them; that he (Brij Loll) moreover gave 7 beegahs of it by hibba to Ram Gopal Adhicary for performing certain prayers, &c., and in short that plaintiff never held it at all, and has no right to any part of what he now claims.

Brij Gopal Adhicary replies much to the same effect, adding that 7 beegahs of the land were given to his brother, Ram Gopal, in

whose place he now stands; that this has been fully proved in court; and that had plaintiff really ever had a fair claim he would have prosecuted it whilst Brij Loll was living, whereas he never did so; but now that he is dead comes forward with a false claim in this way.

Ram Churn talookdar also puts in a reply, denying the truth of the claim, and saying that Brij Loll Singh had no lakhiraj land at all, and that these lands are mal, and appertain to his talook, &c.

Plaintiff rejoins, adding that he knows nothing whatever of the rights set forth by his opponents, but that nothing they say can invalidate his claim.

The moonsiff, after completing his enquiries, &c., on the 6th December 1847, dismisses the case. He observes that plaintiff's case is bad, that his witnesses are people of low caste; and, although the pottah is dated eighteen years back, they speak of it as clearly as if only lately given for which reason he fancies that they must have been tutored what to say; that the pottah itself looks suspicious, and as if the paper on which it is written had been coloured, and made to look old; that Brij Loll Singh's mark on it (a dagger) differs much from the one in the hibbanamah, which he conceives to be genuine, and which, he says, the plaintiff cannot deny that the defendants put in, in a decree in which this very Brij Loll was plaintiff and Shib Nurain and others were defendants, claiming to get the (bhag jote) half proceeds of these very lands, which he would have done had plaintiff's story of his mokurruree pottah been true; that plaintiff claims the lands as given him in 1227 B. S., whereas the above decree in favor of Brij Loll is dated 1243; and it is not likely that he should have let the lands in this way to plaintiff when he could have got more for them from others; that plaintiff had been turned out of the lands eight years before he brought his suit, which also looks suspicious, and that, in short, he does not credit his story, and therefore dismisses the case.

Plaintiff appeals. He states that he has put in dakhilas for these lands, and has abundantly proved his case; that, even if his witnesses are low caste people, they are as good as those of his opponents, and that the fact of their speaking clearly to the pottah given him is surely not against them; that there are others still left whom the moonsiff might have examined had he pleased, or he might have sent an ameen to the place, and have ascertained the truth, and the improvements he made in the lands on the spot; that the moonsiff's remarks as to Brij Loll's decree do not apply, as he (plaintiff) was no party to that suit, and knows nothing of it, and that nothing is said in that order shewing that defendants held the lands, and indeed they have no proof whatever of their holding them at all; that the lands there mentioned may not be those now claimed by him; and that as he has brought forward his claim within the time allowed him, no objection can be made on this score.

The chief point for enquiry in this case is the validity of the pottah said to have been given to the plaintiff by Brij Loll, and I am not at all satisfied from the evidence already taken that it is not genuine. The plaintiff has filed a number of dakhilas in support of it, of the authenticity of which no enquiry has been made, and I see nothing in the decree above mentioned which can invalidate his story. At all events he was no party to that suit, and it is hard therefore that he should be injured by it; and I think the moonsiff would have done well had he made some further enquiry into the matter. I see nothing in the colour of the paper, on which the pottah is written, which can throw a doubt on it (though it seems to have been wet in places) and as for the marks (like a dagger) said to have been made by Brij Loll, as his signature, in both this and the hibbanamah, it is quite impossible to say which is genuine.

Under all the facts of the case, and as there are still several witnesses to the pottah, I think it advisable to take further evidence regarding it, and also to make local enquiry as to the fact of plaintiff having held the lands for so many years. In order to have this done, I have decreed the appeal (reversing the moonsiff's orders), and remanded the case with instructions to enquire more fully into the truth of the respective statements of the parties, after which it will be decided on its merits; the stamp to be returned.

THE 9TH FEBRUARY 1849.

Case No. 5 of 1848.

Appeal from a decision of the Moonsiff of Radhanagore, Moulvee Asudoollah, dated 3rd December 1847.

Gunga Nerain Sein, (Plaintiff,) Appellant,

versus

Fuqueer Rae and others, (Defendants,) Respondents.

Rupees 31-12-16, value of crops.

THE plaintiff states in this case that in mouzah Burkona, the mouroosee lakhiraj property of Gooroopersaud Moonshee, he holds in māt Mirakira, certain lands under a pottah granted to him by the moonshee on stampt paper, and dated 17th Bhadoon 1250, and under it kept them in tillage; but in 1253, when the rains were scanty, he tilled only 9 beegahs, and when the crops were ready on the 17th Aughun, defendant cut and carried off the produce; that, having failed in preventing this, he now sues to recover the value of the grain taken away (18 maps rice and 3 kahuns of straw,) laying his suit as above.

The defendant replies that the claim is unjust, that he holds these lands as ghatwallee, in all by the old measurement 7½ beegahs, by the new about 12 or 13 beegahs, and that his predecessors held them, before him, that in 1250 he gave 7½ beeghas of them to the plaintiff at a jumma of 7-8, keeping the rest himself, and that in this way

plaintiff held them till 1252, when he declared that the jumma was too high, and that he would only pay 6 rupees, and on the 5th Maugh of that year he resigned them altogether, and afterwards he (defendant) kept and tilled them himself, that the lands do not belong to the moonshee at all, and plaintiff's object is to get hold of them himself, though they belong to Government (as ghatwallee,) and they should have been made a party to the suit.

Moharanee Komul Koomaree and Guddadhur Banerjea both claim the lands as belonging to their respective estates.

On the 3rd December 1847, the moonsiff dismisses the case. He observes that the only point he has to enquire into, is who held and tilled the lands at the time stated; that notwithstanding that the plaintiff brings four witnesses to support his claim, and they all speak for him, he does not credit them, and they are all ryuts of the moonshee's, whereas the defendants have 8 witnesses, and it is not likely that they would all speak falsely, and they fully establish the truth of his statement; and from the enquiries he has made, he is sure that the defendant is right, and that the crops were his. He dismisses the case, holding the plaintiff liable for costs, notifying at the same time that this order in no way affects the right of any one to the lands in dispute.

The plaintiff appeals, repeating his claim, and stating that his witnesses fully prove his case and are good, whilst those of his opponent are ghatwalls like himself, and, of course, speak falsely for him; that the land is still in his possession, and belongs to the moonshee; and that an ameen should have been sent to the spot to ascertain the real facts of the case.

I see no cause to disturb the orders passed in this case, as I think with the moonsiff that plaintiff has failed in proving his case, and his witnesses in a manner corroborate the defendants' story. The defendant has filed the estifa given him by plaintiff, and altogether the evidence is much better on his than on the other side. Under these circumstances I have confirmed the moonsiff's orders, rejecting the appeal, and making the appellant liable for the costs.

THE 9TH FEBRUARY 1849.

Case No. 7 of 1848.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated 6th December 1847.

Kartick and Gunesh Mohapattur, (Plaintiffs,) Appellants,

versus

Nundloll Mohapattur and others, (Defendants,) Respondents.

Rupees 276-5-5, wassilat.

THIS suit is brought by the plaintiffs to recover the above sum as due to them as wassilat by the defendants, in a case formerly

given in their favor. They state that in 1240 B. S. they brought a suit against the defendants for having ousted them of certain lands and carried off the crops, and on the 13th Chyte 1242, obtained a decree against them with wassilat for that year (1240), but defendants, being dissatisfied, appealed it (No. 690,) and got the moonsiff's order reversed; that they in like manner made a special appeal of it, when the last orders were reversed by the judge, and those passed by the moonsiff confirmed; that the case was under litigation both in 1241 and 1242 B. S., but no orders were passed awarding them wassilat for this time; and, as they are justly entitled to it, they now bring this suit in order to obtain it; that they applied to the judge for a review of judgment, and in order to have this omission rectified; but he refused their request, and his refusal was upheld in the Sudder Dewanny Adawlut, to whom they then appealed; and, as they have now no other resource, they bring the present suit.

Nundloll defendant replies that the present suit cannot be heard, and that, under Sections 12 and 16, Regulation III. of 1793, plaintiffs are liable to punishment for bringing it, that the durkhast is opposed to Circular letter 11th Jaunary 1839, and Construction No. 1129, and cannot now be entertained at all, &c.

On the 6th December 1847, the moonsiff decides the case. He remarks that although the plaintiffs have filed the copy of a decision given in the Sudder Dewanny Adawlut, it does not at all apply to this case; that plaintiffs' first decree (in the moonsiff's court) was certainly passed before the Circular letter of the 11th January 1839, was issued; but this was not the case, when their case was in special appeal, and nothing was then said about giving them wassilat for the time the matter was in litigation; that they should have asked for it when suing out execution of the decree they had got; that, under Section 2, Regulation II. of 1825, they applied for a review of judgment, but this was rejected both by the judge and by the Sudder Court, and that under all the facts of the case he can do nothing: he therefore dismisses the case, holding plaintiffs liable for costs.

The plaintiffs appeal, declaring that the moonsiff is quite wrong, and that they have given him a precedent, shewing that their present claim is good; that their case commenced before the letter of the 11th January 1839 was issued, and, of course, it cannot apply to it; that, notwithstanding that their petition for review was thrown out and rejected both by the judge and Sudder, this does not affect their right to bring a new suit; that reckoning from the first order given in their favor only 10 years and 8 months have passed, and only 7 years and 5 months from the date of the special appeal; that they are, in justice, entitled to recover; and that only one of the defendants has put in a reply, though another of them (Ramdhun) was present, and, seeing that the case was going against him (plaintiff,) in the moonsiff's court, put in a vakalutnamah just before it was decided, whereby he has been made to pay additional costs, &c.

On looking over the proceedings held in this case, I observe that the plaintiffs' original decree (in the moonsiff's court) was dated the 24th March 1836; that the defendants appealed it, and got the order modified by the principal sudder ameen, on the 21st July 1837, whereupon the plaintiffs preferred a special appeal, which was decided by a former judge on the 20th June 1839. Before this, however, the letter so often mentioned of the 11th January 1839, (directing that all omissions of wassilat, &c., in decrees, should, in future, be rectified by an application for review of judgment, and not by bringing a separate suit,) was issued, and accordingly the plaintiffs applied for it on 11th July 1846, upon a stamp of the full value of 8 rupees; but this was rejected by the judge (and also in appeal by the Sudder Court,) on the grounds both of there being no good grounds for it, and also for the plaintiffs' having so long delayed to make it.

The question is, after this rejection of the application for review, can the same thing be brought forward again in the shape of a new suit? I think not. The judge has deliberately stated that he saw no good grounds for a review, and his order was upheld in appeal by the Sudder Dewanny Adawlut, and I do not see therefore how the thing can again be mooted in its present shape. Under all the facts of the case, and as I do not see reason to interfere with the moonsiff's orders, I have confirmed them, rejecting the appeal, and holding plaintiffs (appellants) liable for costs.

THE 12TH FEBRUARY 1849.

Case No. 7 of 1848.

Appeal from the decision of the Principal Sudder Ameen, Baboo Chunder Sekur Chowdhry, dated 5th March 1847.

Kenaram Chuckerbutty, (Defendant,) Appellant,

versus

Kenaram Tewarry Talookdar, (Plaintiff,) Respondent.

THIS suit is brought by plaintiff as talookdar to have a proper rent fixed on certain lands held by the defendant. He states that defendant in mouzah Makra, lot Sahibgunge, holds 83 beegahs of land, for which he does not pay a fair rent, and, having called upon him in vain, in conformity to the provisions of Regulation V. 1812, to come in and have it adjusted, he now sues to have it fixed at the fair and proper rate, viz. rupees 334-11-16.

Appellant replies that he has in mouzah Makra jummas of various kinds, amounting to 56 rupees a year, and that, having paid at this rate for more than 12 years past, he is not now liable to any enhancement; that plaintiff has not properly defined and stated the boundaries, &c., of his lands; that he holds in this mouzah 39-16 beegahs of lakhiraj, and besides this 9 beegahs more and two gardens paying

a punchukee jumma of 18 rupees, and also 18 beegahs of mâl, of which the jumma is 20 rupees; that his rent was formerly much less, but when Muddun Potedar (a durputneedar) brought a suit against him, it was settled between them that he should pay 56 rupees annually, and this is the sum which has been paid and taken ever since; that he let 27 beegahs of his land to a man named Ram Tunoo, but by the machination of Huree Sunkur (who is the real talookdar, though it stands in the name of the plaintiff,) he has been ousted of it; that plaintiff brought some suits against him under Regulations V. and VII. for these lands, but totally failed in them; and that, in short, he is not liable to have his rent enhanced at all.

Both parties rejoin in support of their respective claims, but add nothing which requires further remark.

The principal sudder ameen deputes an ameen to survey the lands actually held by the defendant, and after receiving his report and completing his enquiries, &c., on the 5th March 1847 decides the case. He states that defendant has in hand, in all, 50 beegahs 14 cottahs, of which he claims 39-16 as lakhiraj, but which rather appears from the statements of the witnesses, &c. to be punchukee (paying a quit rent); that of this quantity, however, he states that he has been ousted of 27 beegahs, which deducted from the above 39-16,—which he claims as free—leaves 12-16, which again being deducted from the whole 50-14 now in his possession, leaves land liable for rent, 37-18; that however defendant demurs to another 5-4 of this as not belonging to him (and which plaintiff can take if he likes,) and this too being deducted, leaves the actual quantity held by him, and liable to pay rent, 32-14-6; that although the plaintiff puts in the copy of an order, shewing that punchukee land may be assessed, still he (the principal sudder ameen) considers the defendant's claim to the 39-14 as good and valid, though he rejects that for the 9 beegahs and two gardens, and which defendant professes to hold under a separate sunud, as bad, and he remarks that he (defendant) made no mention of it in his reply. He then observes that defendant has been duly served with the required notice to settle for his lands, and then proceeds to assess them (the 32-14-6) at certain rates detailed in his proceedings, fixing a jumma on them of rupees 101-2-16, from and after 1252, and decrees the case for plaintiff with costs in proportion to this sum.

The defendant appeals. He states that, out of the lakhiraj lands 39-16, he has lost but 12, and of the punchukee lands 15 beegahs, thus making the 27 beegahs mentioned in his reply, whereas the principal sudder ameen has deducted the whole 27 from this head, which is clearly wrong, and all above this 12 should have been allowed him, that his lakhiraj lands can only be taken from him by a regular suit, that the 27-16, (which is the real quantity held under the "char" granting him 39-16) cannot now be assessed, that the principal sudder ameen is wrong in calling these lands pun-

chukee as they are quite distinct and separate, that his mâl lands are 18 beegahs, though they have been measured as 15, and that the whole rent leviable from him is but 56 rupees, &c.

In this case the appellant (defendant) claims to hold certain lands free of assessment under two documents, the first a "char" giving him 39-16, and the second a sunnud (date 9th May 1790) for 9 beegahs punchukee, with some gardens of which the amount is not stated, but it is said to be about 8 beegahs more. The principal sudder ameen admits the validity of the first, and deducts 12-16 for lands still held under it, striking off the 27 beegahs, of which, he says, defendant admits that he has been deprived. The sunud he rejects *in toto*, and, of course, allows nothing for the land held under it. The defendant appeals, and declares that he still holds beegahs 27-16, of the beegahs 39, given in the char, and beegahs 2-10 of those given under the sunud, and calls both documents valid, and states that all these lands should have been allowed him. It has been shewn that he holds (deducting the beegahs 5-4,) in all beegahs 45-10, and the question is how much of this is liable to assessment.

I have gone fully into this case, and, after mature consideration, quite agree with the principal sudder ameen in the view he has taken of it. I think with him that the defendant's (appellant's) sunud is invalid and worthless, and, of course, therefore, can deduct nothing for the lands held under it. Under these circumstances the only title he has to hold land free of assessment, is the char, which gives beegahs 39-16. He admits that he has lost 27 beegahs of land not liable to rent (12 of them, under the char, and 15 under the sunud, but as I do not recognize the validity of the latter, of course the whole of these 27 beegahs must be deducted from those held under the char, which is only what the principal sudder ameen has done. There is no dispute as to the rates fixed, and therefore, as under all the facts of the case I see no cause to interfere with the orders already passed, I have confirmed them, dismissing the appeal, and holding appellant liable for all costs.

THE 13TH FEBRUARY 1849.

Case No. 10 of 1848.

Appeal from the decision of Kazee Hamid Ally, Moonsiff of Sonamooky, dated the 3rd December 1847.

Musst. Hurodossee Beebee, (Plaintiff,) Appellant,

versus

Soobhul Mullick and others, (Defendants,) Respondents.

Company's rupees 53-5-2-2, debt.

THIS case, originally decided by the moonsiff of Sonamooky, on the 30th September 1846, was remanded by me on appeal by the

defendants for further enquiry, in my proceeding dated 27th April 1847, and, having a second time been disposed of by him, is now appealed again by the plaintiff. The particulars of the case are detailed in my orders of the above date, and it is needless to repeat them again.

The moonsiff has now reversed his former orders, and has dismissed the case. He remarks that, although three witnesses speak in favor of the plaintiff and to the truth of her statement, he does not, under all the facts of the case, credit their testimony; and that it is not satisfactorily shewn for what purpose the defendants (who are quite unconnected with each other) should all have jointly taken the money, or indeed why it was taken at all, whilst on the other hand the defendants' witnesses speak clearly to the parties having for some time been at issue; and that, as under the further evidence taken, he does not consider the plaintiff's case established, he dismisses her claim.

The plaintiff appeals. She states that she had other witnesses, who might have been examined; that those whose depositions have been taken, speak clearly to the fact of the moneys being borrowed by the defendants, and are each and all very respectable people; that very great delay took place before the defendants gave in their replies; and that some have never done so at all,—all of which is in favor of the truth of her claim,—that she merely heard that a decree had been given in her favor, and not that two of the defendants had been exempted from it (by the first decision,) or she would certainly have appealed the case then; that the money was lent as a good investment, and for profit; and that she has dealings of this kind with other persons, and, in fact, has obtained decrees against them, &c.

I have gone fully into this case, and really see no cause to alter the orders passed on it. I am not at all satisfied of the truth of the claim, nor do I think that the plaintiff (appellant) has assigned satisfactory reasons for the defendants (unconnected as they all are with each other) having borrowed the money at all. The moonsiff's personal enquiries would shew that two of them at least were under age at the time the bond was written; and this, no doubt, throws much suspicion on the whole transaction, and is backed by the statements of the defendants' (respondents') witnesses of the parties being at issue. On the whole, as I do not consider that the plaintiff (appellant) has satisfactorily established her case, I see no cause to interfere with the orders passed upon it. I have upheld them, rejecting the appeal, and holding plaintiff (appellant) liable for costs.

THE 14TH FEBRUARY 1849.

Case No. 9 of 1848.

Appeal from the decision of Kazee Hamid Ally, Moonsiff of Sonamooky, dated the 7th December 1847.

Nuffer Chund Manjee, (Defendant,) Appellant,

versus

Chundernerain and others, (Plaintiffs,) Respondents.

THIS suit is brought by the plaintiff to recover the sum of rupees 294-2-15, as due to him by the defendants for moneys collected by them and not accounted for, whilst they were his gomastahs. He states that he holds certain lakhiraj lands in mouzah Radharumunpoor, pergunnah Barrohazaree, over which he appointed Nuffer Manjee gomastah, on the security of Kumul Pattur; that the appointment was made in the first instance on 15th Assar 1240, the kubooleeuts, &c. being then taken on plain paper, but on 2nd Aughun following these were taken back, and fresh ones written on stampt paper, after which defendants entered on their duties, &c.; that on 21st Assar 1842, they had a settlement of accounts, when it turned out that defendants had collected 147-14-16, for which they could not account, wherefore they gave him an engagement, acknowledging and promising to pay this sum, and subsequently by a person named Lollmohun paid 10 rupees of it, but the rest being still due, he now seeks to recover it with interest, &c., making in all the sum of Company's rupees 294-2-15.

Nuffer Manjee defendant replies, and denies the justice of the claim. He states that the plaintiff asked him to be security for Kumul Pattur, but that he refused, upon which plaintiff told him that Kumul would manage every thing, and that his (defendant's) name only would be used; that, if he had agreed to this, he would have given regular security, and also have seen and ascertained how matters were carried on, whereas he did nothing of the kind, and cannot be held responsible; that in 1248 plaintiff paid him a sum of money on another account, which he would not have done had his present claim been well founded.

On the 7th December 1847, the moonsiff, after completing his enquiries, decides the case, remarking that the plaintiff has fully proved his claim; that, notwithstanding defendant's assertion that his name only was to be used, it is quite clear that the claim against him is just; that his (defendant's) witnesses are non-resident and of low caste, and that in short he does not credit what they say; and, under all the facts, he decrees the case for the plaintiffs.

Defendant appeals. He states that the enquiry is incomplete and full of errors, and the documents bad, and written on stamps of inadequate value, being written on one rupee paper, whereas with the powers granted by them, the papers should have been of 8 rupees

value, that the whole thing is full of contradictions; and that it is by no means clear who was really the gomastah and who the security; that the signatures are dissimilar, and the witnesses quite differ in their accounts of the thing; that in 1248 plaintiff paid him the sum of 391 rupees, which he surely would never have done had he had this claim against him, and that no explanation of this has ever been given; that he had further evidence, but that the moonsiff would not take it, the case being decided so near the close of the year; that local enquiry should have been made as this would have shewn the truth, and proved who really collected the money, &c.

I am not altogether satisfied with the enquiries made in this case, and think them incomplete; but independent of this, I observe that the document upon which the claim is really founded (the account drawn up on 21st Assar 1242, and signed by the defendants who engage to pay the balance due) is on plain paper, and in its present state cannot be received: this the moonsiff has quite overlooked, though it is opposed to the rules laid down in the Circular Order of the 7th January 1842, No. 179. Under these circumstances, I have decreed the appeal (reversing the moonsiff's orders,) and remanded the case, with instructions to him to proceed, in the first instance, in conformity to the provisions of the above Circular, and pass such orders as he may deem proper with reference to getting the plaintiff's account stampt, after which, in the event of this being permitted, he will take such further evidence in the case as the parties may wish to bring forward in support of their claims, and then decide accordingly. The usual order for return of stamp.

The 26th February 1849.

Case No. 198 of 1848.

Appeal from a decision of the Moonsiff of Bishenpore, Moulvee Noorul Hossein, dated the 17th April 1848.

Ram Chand Adhecarry and others, (Defendants,) Appellants,

versus

Gour Mundle, pauper, (Plaintiff,) Respondent.

The plaintiff sues in this case to recover possession of certain lands, &c., from which he states that he has been ousted by the defendants. He adds that he formerly brought a suit for these same lands against some of his partners, and the ryuts (defendants,) and on the 5th Maugh 1245 got a decree for them, but it was appealed by Nursingh Adhecarry, father of the defendant (appellant) Ram Chand; that, notwithstanding this, having sued out execution of it, he was put in possession of the land, when the ryuts (defendants) deceived him by promising to give him a share of the crops, which

were then ready, and further to give up the lands themselves to him altogether; but having failed in doing either, they have in truth again ousted him from them, although his rights were confirmed in the appeal above spoken of. He therefore now seeks to be restored to them with wasilat, &c., laying his claim at 229 rupees.

Ram Chand Adhecarry and the other defendants all give in separate replies, stating, generally, that they are mouroosee ryuts in the lands in question, but have never deprived the plaintiff of them. They all describe their different holdings and the rent, &c., they pay, (but I must say that they do not very clearly or satisfactorily do so,) and declare that plaintiff has no right to the lands, but only to rent, &c., as malick.

The plaintiff does not rejoin and indeed takes no further notice of the defendants' statements.

On the 17th April 1848, the moonsiff decides the case. He states that none of the defendants put in their replies, until after the plaintiff had brought forward his witnesses, urging sickness as an excuse for this; that he had then called upon them (under Cons. No. 375) to prove this, when their vakeel stated that they had two witnesses in attendance, who would do so; that plaintiff had then given him a durkhast, stating that the story of sickness was quite false, and that the two witnesses, who had been named, were constantly giving evidence in the courts and were not trustworthy, whereupon he (the moonsiff) had ordered them both (under Act I. of 1848) to be put on security (hazeer zaminee,) upon which they had kept out of the way. He then proceeds to remark on the merits of the case, and says that, after looking over the decree formerly given in favor of the plaintiff, it is quite clear that he (plaintiff) is entitled to get the lands whilst no mention is made in it of the defendants' having any right to hold as tenants, &c., under him, and he therefore decrees the case in full for plaintiff.

Ram Chand and the other defendants appeal. They state that the moonsiff's proceedings in this case are quite irregular, inasmuch as he has allowed the plaintiff to put in a supplementary plaint, which he had no power to do, and which alone is fatal to his case; that his remarks as to the delay which took place in filing their replies are uncalled for, as he should not have taken them at all had they been to blame as he says; whereas they were quite prepared to prove that the delay was unavoidable; that he is also wrong as to plaintiff's former decree, as in appeal the orders were modified (22nd August 1845) by a former judge of this court, and they (appellants,) being proved to be old ryuts, and to have had no hand in ousting plaintiff (respondent) from the lands, were exempted from all responsibility under it; that a perusal of the proceedings then held will set all this right and be quite conclusive as to their claim as ryuts; that in fact no enquiry has been made into the present case, even supposing the matter of the supplementary plaint to be such as may be overlooked, &c.

From a perusal of the proceedings held in this case, it appears to me that they cannot for a moment be upheld. The moonsiff has clearly allowed the plaintiff to file a supplementary claim, which he had no power to do, and, besides this, has acted very irregularly in putting the witnesses on security, before he had ever examined them, or ascertained what they would say, and this, of course, frightened them away. Independent of this the case has by no means been fully entered into, and the very decree he speaks of as proving the plaintiff's claim, was, it appears, modified on appeal, and the defendants exempted from all liability under it, on the grounds of their being simply ryuts, and of having had nothing to do with regard to ousting plaintiff from the lands.

Under all the facts, I deem it my duty to return the case for further and complete enquiry, and the moonsiff will, in the first place, consider the plaintiff's (respondent's) plaint, and the error in it, and pass such orders as he may think proper regarding it; and should it be such as will still admit of its being carried on, he will then give the defendants (appellants) an opportunity of explaining the delay, which has taken place in filing their replies, and in short take such evidence as the parties may bring in support of their respective claims, after which he will, of course, decide it upon its merits.

With reference to the above remarks the appeal is decreed, (the moonsiff's orders being reversed,) and the case remanded for re-investigation, and the usual order passed for the return of the stamp.

THE 26TH FEBRUARY 1849.

Case No. 64 of 1847.

Appeal from the decision of the Moonsiff of Radhanagore, Moulvee Asudoollah, dated 16th December 1846.

Musst. Heeramonee, (Defendant,) Appellant,

versus

Nudear Chund Biswas, (Plaintiff,) Respondent.

Rupees 45-9-6, to reverse sale and obtain possession of land, &c.

THIS suit is brought to reverse the sale of a tank and parcel of ground made under the following circumstances.

Plaintiff states that his grandfather, Purmanund, had five brothers, himself being the eldest, Manick, Hridoy Ram, Bhowanee, Kumla Kaunt, and Neelamber; that Bhowanee, however, left the rest many years ago, taking his full share of all the property, the others remaining in joint occupancy of the rest of it; that after a time

Kumlakant, who was childless, gave all he had to his (plaintiff's) father, Nehal, who at his death came in as his sole heir; that Hridoy Ram also died, when his effects were duly divided between the surviving brothers, all sharing them equally; that some time after this Manick gave plaintiff his share of the property, doing so by a hibbanamah drawn out and witnessed by a number of respectable people, and dated 28th Phalgoon 1240, but as he (plaintiff) was then a child, it was for a time entrusted for him to the care of his father, Nehal; that subsequently Nehal's second wife, Musst. Heeramonee, brought a suit against him (Nehal) for maintenance, and, getting a decree, sued out execution of it, and in so doing attached and sold certain portions (a tank and parcel of land) of the property given to him (plaintiff) under the above hibba, declaring that it belonged to Nehal himself, and, though he (plaintiff) put in a claim for it, from his being unable at that time to prosecute it, and put in his proofs, &c., it was rejected; that in the proceedings then held Musst. Muggun Monee, a daughter of Neelamber, also put in a claim for 1-4th of the effects attached and by collusion on the part of the degreedar (Heeramonee defendant) her claim was allowed, and 1-4th being deducted as belonging to her the rest was sold; but as in truth all of it under the hibba belonged to him, and not to Nehal at all, he now brings this suit to have the sale set aside and the property restored.

Musst. Muggun Monee replies, denying the justice of the claim. She states that her father, Neelamber, outlived all his brothers (Bhowanee having previously separated,) and obtained possession of their respective shares; that the whole of them, excepting Purmanund, who left two sons (Nehal and Heeraloll) died childless, and that in this way she is entitled in right of her father to 12 annas, 16 gundahs of the whole estate, whereas Nehal, not content with what justly belongs to him, has managed to oust her of the greater part of it, and now holds 12 annas, whilst she has but 4; that Nehal, being aware of her intention of bringing her claims before the courts, has got up this story of the hibba, and hopes by getting it sanctioned in this way of stopping her, and of gaining the property without the expence of a regular suit for it; that the present claim is unfairly valued, and the hibba itself false, or it would have been put in, in the case of execution, and that her claim to 1-4th was then allowed, as she was found to be actually in possession of it.

Musst. Heeramonee defendant (Nehal's wife) replies much to the same effect, and states that the hibbanamah is false. She adds that her husband, Nehal, holds 3-4ths of the property, and Muggun Monee the rest; that the property, the sale of which it is now sought to reverse, was originally obtained by Purmanund, and not by Manick, through whom plaintiff claims; and that until a regular suit is brought to prove and establish the hibba, it must be held to be invalid, &c.

The moonsiff (16th December 1846) in deciding the case, remarks that the plaintiff's witnesses fully prove the fact of the hibba, to

which indeed Neelamber (Muggun Monee's father) is a witness, whilst those of the defendant in a manner corroborate it; that the plaintiff puts in an order (No. 3307,) shewing that the tank and the land, whose sale the plaintiff seeks to reverse, were actually held by Manick, which order too was upheld in appeal; that all he has to do however is to see whether they really belonged to Nehal, when sold, or to his son (plaintiff,) and that, as he is convinced that they did not, he reverses the sale, and decrees the case for the plaintiff, but adds that his order shall in no way affect the rights of any one to hold them either under the hibba, or on any other plea.

From these orders both the defendants appeal, Heeramonee in this and Muggun Monee in the following case. The former declares that the hibba is not genuine, and that its validity can only be established by a regular suit brought for the purpose; that every thing proves that it is false; and that it was not put in for a very long time even in this case, to say nothing of the one for execution; that plaintiff's decree (No. 3307) is no proof whatever, and that these lands, &c. were obtained by Purmanund alone; that all the witnesses were not examined, and that the case is consequently incomplete; and that she has formerly proved that her husband Nehal held the lands, and that the sale cannot now be reversed.

The only point for enquiry in this case is the validity of the sale sought to be reversed; and this must depend entirely on the fact of the property attached and sold, having really belonged to Nehal, and, in the proceedings then held, I see nothing which satisfactorily proves that it was his. His son (plaintiff) even then put in a claim for it as his, but neglecting to file his proofs, &c., it was struck off, whilst another, made by Muggun Monee (defendant) was allowed only because Heeramonee (defendant) the degreedar admitted it to be just. I see nothing throughout the whole proceedings to shew that it was *bonâ fide* Nehal's property; and it was never even pretended by Heeramonee that her husband Nehal had no other assets from which the amount of her decree could have been realized. Under all the facts of the case I concur with the moonsiff in the view he has taken of it as far as regards the reversal of the sale; but as he in the end of his roobakaree goes beyond this and passes orders with regard to the 1-4th formerly allowed to Muggun Monee, and which he should not have done, I have modified his order in this respect, leaving matters as they were before the attachment and sale, and each party the option of taking such steps as they deem proper in support of their respective claims. The appeal is therefore in this case dismissed, and the order of the moonsiff modified as above stated,—the appellant being liable for costs.

THE 26TH FEBRUARY 1849.

Case No. 62 of 1847.

Appeal from the decision of Moulvee Asudoollah, Moonsiff of Radhanagore, dated the 16th December 1846.

Muggun Monee, (Defendant,) Appellant,

versus

Nudearchand Biswas, (Plaintiff,) Respondent.

THIS is a separate appeal made by one of the defendants in the suit brought by Nudearchand Biswas, to reverse the sale of certain property belonging to him; and as its details have already been given in No. 64, there is no necessity to repeat them here. A similar order has of course been passed on it, excepting that appellant has been allowed costs (the appeal being decreed) in proportion to the amount of the moonsiff's order, which has been modified.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH, ESQ., JUDGE.

THE 3RD FEBRUARY 1849.

No. 129 of 1848.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Zorawurgunge, dated the 23rd February 1848.

Ruzeeooddeen, Appellant,

versus

Sreenarain, Respondent.

THE respondent brought this action to reverse a summary decision of the deputy collector, dated 7th February 1846, and to recover from the appellant the sum of rupees 15-8, illegally taken by him for rent. The respondent states that Musst. Urman Beebee, has an ehtimam pottah from Deiah Beebee, and that he cultivates 1 krant 16 gundahs of it, and pays her rent.

The appellant states that he has an ehtimam pottah from Deiah Beebee, and that the respondent voluntarily gave him a kubooleeut for the land (2 krants 10 gundahs) in his cultivation on the 25th Bhadoon 1207, and that this was proved before the deputy collector.

The moonsiff, in his decision, observes that, both the appellant and Urman Beebee have filed pottahs given to them by Musst. Deiah Beebee, but that Urman Beebee's is dated previously to that of the appellant, and he therefore reversed the deputy collector's decision, and decreed the amount claimed.

From this decision the appellant urges that the pottah given him by Deiah Beebee is fully proved, as also the kubooleeut executed to him by the respondent.

The points to be decided in this case are, whether the land was cultivated by the respondent, and whether the kubooleeut given by him to the appellant is proved. On the first point there can be no doubt, for the respondent admits that the land is in his possession, and he has filed the receipts of Urman Beebee to shew that he has paid his rent to her. The kubooleeut alleged by the appellant to have been executed to him by the respondent was not filed in the moonsiff's court, nor did the appellant bring forward any evidence to prove its existence. He filed it in the court of the deputy collector and, immediately after the decision of the case, obtained its restoration to him. The quantity of land in the kubooleeut was stated to be 2-10, whereas the quantity in the appellant's pottah is

only 1-13-3, so that the reason of his not again filing it is obvious. The moonsiff ought not to have given any opinion in this case upon the validity of the pottahs bearing the signature of Deiah Beebee, as this suit rested entirely upon the kubooleeut. His order, however, reversing the decision of the deputy collector, is correct, and I therefore confirm it, and dismiss the appeal.

THE 3RD FEBRUARY 1849.

No. 267.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 27th March 1847.

Yoosoof Ally, Appellant,

versus

Kashinath Podar and others, Respondents.

THE respondents sued the appellant and Mahomed Tukee for money borrowed by them. On the 4th November last, the case was, upon the appeal of Mahomed Tukee, returned to the moonsiff for investigation, for the reasons stated in the proceeding of that date. A repetition of them is unnecessary. The appellant is entitled to the value of the stamp.

THE 3RD FEBRUARY 1849.

No. 310½.

Appeal from the decision of Kazee Furahatoollah, Moonsiff of Bhojpoor, dated 6th May 1848.

Sheik Obedoollah Khan Buhadoor, Appellant,

versus

Musst. Bachonee, Respondent.

THE respondent stated that her father had an ehtimam pottah for 4 k., 9 g., 2 c. of arable land, and 9 d., 2 k., 1 g., 3 c. jungle, which Chand Ghazee, in collusion with the zemindar, on her father's death, withheld from her, and she therefore brought this action to obtain possession. The zemindar, the appellant, stated that, on the death of the respondent's father, the land became waste, and he therefore let it out to Chand Ghazee.

The moonsiff decreed possession of the estate to the respondent, and declared the appellant liable for all the costs of suit, amounting to rupees 16. After appeal, the parties filed a soolehnamah, in which it is set forth that the appellant has paid to the respondent 11 rupees for costs, and that no further claim on this account can be made: that the land in dispute shall remain in possession of the respondent, who shall pay annually to the appellant the sum of rupees

3-5-9 for the arable land, and shall bring into cultivation the waste land within three years from which time she shall pay rent for it at the local rates. Should the respondent omit to bring the waste land into cultivation, the appellant shall be at liberty, at the expiration of three years, to lease it out to any third party he may please. I therefore amend the moonsiff's decision, and decree the case in conformity with the soolehnamah.

THE 3RD FEBRUARY 1849.

No. 582.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 30th November 1847.

Woheed Khan, Appellant,

versus

Kumur Ally, Respondent.

THE respondent states that he purchased a curry stone from Backer Ally, and that the appellant claimed it as belonging to Fool Beebee, but promised that, if he would give him 4 rupees, he would not lodge a complaint at the thannah. He accordingly paid the money on the 20th Sawun 1207, and now institutes this action to recover it.

The appellant denied all knowledge of the transaction; but the moonsiff, considering the transaction proved, gave a decree for the amount. The appellant urges that the transaction is not proved, and that, if it had been true, his neighbours would have been aware of it. Three witnesses were examined on the part of the respondent, two of whom stated they were present when the money was paid to the appellant; the other only heard of the transaction. I cannot however credit their evidence. The price of a curry stone does not exceed 8 annas, and the respondent never urged the claim for two years, nor mentioned the transaction to any one. I therefore reverse the moonsiff's decision, and dismiss the suit. All costs in both courts to be defrayed by the respondent.

THE 3RD FEBRUARY 1849.

No. 456.

Appeal from the decision of Mr. Wright, Moonsiff of Sundeep, dated 2nd August 1847.

Zumeeroddeen Mahomed, Ashuck, and others, Appellants,

versus

Sonaram Burnick and the Receiver of the Supreme Court, Respondents.

THIS was an action to reverse the summary decision of a deputy collector, dated the 11th July 1846, and to recover the sum of

rupees 53-3-5-1, from the appellants. The plaintiff Sonaram stated that he and the respondents were in possession of a talook named Mahomed Akber, situated in turuff Bowanneechurn at the annual rental of rupees 49-3-11-1; that he paid in the year 1252 B., the amount of rent due from him for the portion of the talook in his possession, but that, notwithstanding, Mr. R. O'Dowda, the receiver of the Supreme Court, brought an action against him jointly with the other sharers, and obtained a decree in the court of the deputy collector for rupees 53-3-5-1, inclusive of expenses, against him alone, and he therefore brought this action to reverse the decree, and to obtain from his partners their respective shares.

Mr. O'Dowda admits that he has received the rent from Sonaram, under the decree, but pleads that he and the appellants are jointly and severally responsible, and that consequently the summary decree cannot be reversed.

Zumeerooddeen and the other appellants admit that the talook is in their possession, but they plead that they have paid the rent claimed to the tehseeldar.

The moonsiff, in his decision, states that the appellants have filed four receipts for the aggregate sum of rupees 23-13-8, which are signed by Osanchunder tehseeldar, on behalf of the zumindars of turruff Bowanneechurn; that the estate has been long under the management of the receiver of the Supreme Court, and that consequently the amount paid to the tehseeldar of the zumindar cannot be admitted as a set-off against the present claim. He therefore upheld the summary decision of the deputy collector, and decreed to the plaintiff the amount paid by him on behalf of his partners proportionably to the amount of land in their possession.

The appellants urge that Osanchunder is the agent of the receiver of the Supreme Court, and that this fact is proved. The evidence adduced by the appellants in the moonsiff's court did not shew that Osanchunder was the agent of the receiver, but as this point was not prominently noticed and investigated, the appeal was admitted in May last, and the appellants were called upon to adduce any further evidence they might have to this fact. As they have been unable to bring forward any more evidence up to this date, I see no reason to disturb the moonsiff's decision, and accordingly confirm it, and dismiss the appeal with costs.

THE 16TH FEBRUARY 1849.

No. 1.

Original Suit.

Abdool Hameed, Vakeel,

versus

Mooteeollah, Burkundauze.

ON the 3rd February, the jemadar of the guard of the court reported that one of the pleaders had brought an action against a

burkundauze of the guard, for damages for executing an order of this court, in the court of the moonsiff, and the case was accordingly sent for by me.

To-day, in the presence of both parties, it came before me for trial. The plaint sets forth that on 26th January last, the plaintiff was in court, when the burkaundauze turned him out of it, because he was spitting, and that by doing so his character has been damaged, and he therefore brings this action for 150 rupees damages. On questioning him, the plaintiff admits that the burkundauze was acting under the orders of a judge of this court, and that moreover he has received no damage from the act. The other pleaders of the court accept briefs with him, and he is in no way prevented from association with his equals. As the burkundauze was acting in obedience to the orders of this court, and the plaintiff has received no injury, his action cannot be sustained. No [illegible] violence is pleaded in the execution of the order; and if [illegible] were tenable, no process of court could ever issue. I therefor[e dis]miss the suit with costs.

THE 19TH FEBRUARY 1849.

No. 31.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 27th December 1848.

Chooromonee, Appellant,

versus

Boodoo Podar, Respondent.

THE plaintiff states that his father and the defendant inherited from their father a khergoor, instrument for sacrificing goats, and that they used it in common, and that he also, on his father's death, had it in common with his uncle, but that his uncle has lately refused him the use of it, and as the value of it is 2 rupees 8 annas, he brings this action to recover half the amount.

The defendant states that, on the death of his father, the property left by him was divided, and that the khergoor fell to his share.

The appellant produced two witnesses, who failed to prove that he or his father had ever used the instrument in common with the defendant, and they stated moreover that the defendant did not live in the same house with them. The moonsiff therefore dismissed the claim; and, after reading the evidence, I see no reason to doubt the correctness of his decision, and accordingly confirm it.

THE 20TH FEBRUARY 1849.

No. 133.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 25th February 1848.

Budee-oor-Ruhoman and Musst. Zeinub Beebee, Appellants,

versus

Golam Hossein Burkundauze, Respondent.

THE respondent states that he married the appellant, Zeinub Beebee, in the year 1190, and that she eloped with Budee-oor-Ruhoman in the year 1209, carrying away with her personal ornaments of great value. He therefore brings this action to recover possession of the person of his wife, and states that he will bring a fresh action for the recovery of his ornaments.

The appellant, Zeinub Beebee, pleaded divorce, and urged that the respondent had rendered himself liable to be nonsuited, as he had declared his intention to bring a fresh action for the value of the ornaments alleged to have been carried away by her.

The second plea was not noticed by the moonsiff; and, as the appellant failed to prove her divorce, the moonsiff gave a decree against her. She now again urges that the respondent has rendered himself liable to nonsuit, having only sued for a portion of his claim. This is correct. Agreeably to paragraph 4 of the Circular letter of the 30th September 1847, the respondent must be nonsuited, and I accordingly nonsuit him. The costs of suit to be defrayed by respondent.

THE 20TH FEBRUARY 1849.

No. 142.

Appeal from the decision of Baboo Nobkishore, Acting Moonsiff of second Town Division, dated 25th February 1848.

Mrs. Esprasa Dias, Appellant,

versus

Mrs. Isabel Gonsalves, Respondent.

THIS was an action brought to compel the appellant to open a drain, which she had filled up by throwing the earth dug from a tank in her possession into it, and which drain had been directed to be kept open by the orders of the magistrate.

The appellant pleads that she cleared away the sand from the east bank of the tank agreeably to the orders of the magistrate; and that the respondent now wants to obtain possession of the land adjoining the west bank of the nullah, and that in the year 1846, on the 16th July, a decree had been given against her for this very land.

The moonsiff states that the former decision was for the west side of the nullah, and this is for the east, and he therefore deputed an ameen to inspect the ground, and took evidence to the point, and recorded his opinion that it was proved that the nullah had, as asserted by the respondent, been filled up by the appellant, and he therefore ordered it to be opened.

The appellant urged that the moonsiff's decision is repugnant to a former decision, dated the 16th July 1846, and as that decision was not filed in the case the appeal was admitted in August last, and the appellant was desired to file a copy of it within one week. This she has omitted to do, and her pleader is unable to assign any cause for the omission, and I therefore confirm the decision and dismiss the appeal.

THE 20TH FEBRUARY 1849.

No. 151.

Appeal from the decision of Moulvee Syed Khyroollah Budukshanee, Moonsiff, dated 29th February 1848.

Musst. Sona Beebee, wife, and Samleh Beebee, daughter of Rajee Ally Shah, deceased, Appellants,

versus

Mahomed Kamil and others, Respondents.

THE appellants state that Rajee Ally Shah lent Mahomed Kamil the sum of 100 rupees upon a bond, dated the 5th Sawun 1197, which was drawn out in his name, and that of Mahomed Hossein, that the respondents have never paid a farthing of the amount, and as Mahomed Hossein has no interest in it, they bring this action to obtain it, together with the same amount of interest.

Mahomed Kamil denies the bond, but states he borrowed 100 rupees from Rajee Ally, and mortgaged to him some land from the proceeds of which the principal of the debt with interest thereon has been liquidated.

Dewan Ally and others, the brothers of Mahomed Hossein, presented a petition, stating that they had no claim, as their father was not a party to the transaction, though his name was entered in the bond.

The moonsiff considered the bond proved, but would only decree half its value as Mahomed Hossein's name was recorded in it, and he refused to allow interest as a period of eleven years had elapsed since the date of the transaction.

The appeal was admitted in September last to try whether the appellants could receive the whole value of the bond and also interest thereon. The respondent has been duly served with notices, which he has acknowledged, but he has not appeared to defend the appeal.

As it appears that Rajee Ally Shah alone advanced the money, and the heirs of Mahomed Hossein have stated they have no claim upon any part of the money, the appellants are entitled to the whole. To the interest also they are entitled, as the action has been brought within the period of twelve years. I therefore amend the moonsiff's decision, and decree to the appellants the sum of 100 rupees principal and 100 rupees interest, and interest thereon from the date of complaint to the date of realization, and also costs of suit.

THE 20TH FEBRUARY 1849.

No. 161.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Zorawurgunge, dated 10th March 1848.

Sonaoollah and Tonoo Ghazee, (Plaintiffs,) Appellants,

versus

Mahomed Ally, Oomer Ally, and others, Respondents.

THE appellant states that a talook Rammanik Dass was sold in the year 1198, and purchased by Mahomed Ally and Shumshare Ally, and that he settled for a tuppeh held by him, and has paid rent to Mahomed Ally for it, from the years 1198 to 1208, and holds his receipts for it, but that, notwithstanding this, Oomer Ally, the heir of Shumshare Ally, has attached his property for rent claimed for 1207 and 1208, and taken it, and he therefore brings this action to compel its restitution to him.

Mahomed Ally states he is the sole proprietor of the talook, and has taken rent from the appellants from the year 1198 to 1208 inclusive.

Oomer Ally states that he is the brother of Shumshare Ally, and he admits that he attached the appellant's property for the years 1207 and 1208 as he refused to pay him rent.

The moonsiff, in his decision, states that, though it is admitted by Mahomed Ally that he has received the whole rent for the years 1207 and 1208, and by Oomer Ally that he has received 15 rupees by attachment and sale, the appellant cannot recover, as he had no right to pay the whole rent to Mahomed Ally when he knew there were other sharers, and he therefore dismissed the claim. As this decision appeared unjust, the appeal was admitted in September last, with the view of determining from which of the contending parties the appellants were entitled to receive back rent. After reading the pleadings and evidence, it is clear to me that the appellants have brought the action in collusion with Mahomed Ally to defraud Oomer Ally of his just rights, and to make it appear that he has no interest in the estate. There is no evidence to shew that the appellants have paid any rent to Mahomed Ally for the years 1207 and 1208, and yet they state that they hold his receipts for the amount. Mahomed Ally denies that Oomer Ally is a partner in the estate, and

yet it is proved by decisions filed in the suit that he is so, and it is moreover proved by chellans filed by Oomer Ally that the appellants paid him rent. Under the circumstances I confirm the moonsiff's decision and dismiss the appeal.

THE 20TH FEBRUARY 1849.

No. 167.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Zorawurgunge, dated 17th March 1848.

Ramram, Chunderkolah, and another, and Kumlee, on her death, Appellants,

versus

Ramkishore Chowdree, Respondent.

THE respondent brought this action to obtain a settlement for two tanks in the possession of Chunderkolah and others, and measured, in dags 239 and 359, as situated in turuff Bejeenarain, purchased by him.

The appellant, Chunderkolah, states that the tanks are situated within the talook of Hubeeboollah, and that they have long had possession of them paying him rent, that he has sold the talook to Ramram, who has confirmed their pottah, and that they continue to pay rent to her, and that the tank was dug by his ancestor, Joynarain Birdun.

The moonsiff, considering the respondent's right to the tanks established, especially as they are entered as belonging to his turuff in the present measurement papers, gave a decree in his favor.

There is no evidence whatever to shew that either the respondent or the former proprietor ever had possession of the tanks. Four witnesses only were produced, who merely prove the possession of the appellants, but are unable to say to whom rent is paid.

The existence of the talook Hubeeboollah and the sale of it to Ramram are clearly proved, and mention of the tank is made in the pottah given to the appellant, and it is proved that Chunderkolah pays rent to Ramram. Under these circumstances I reverse the moonsiff's decision, and dismiss the claim with costs.

THE 24TH FEBRUARY 1849.

No. 193.

Appeal from the decision of Moulvee Abdool Hossein, Moonsiff of Hathazaree, dated the 27th March 1848.

Ramdass and Traheram, Appellants,

versus

Abdool and others, Respondents.

THE respondents stated that they and their ancestors have for more than forty years been in possession of 1 k. 5 g. of land at the

fixed rent of rupees 3-2; but that the appellants, having purchased the turruff in which it is situated, refuse to take the rent fixed, but demand more, and they therefore bring this action to establish their right to hold it at a fixed rate.

The appellants denied that the land is let at a permanently fixed rate, and stated that the respondents had voluntarily offered to pay them 5 rupees for it.

The respondents failed to produce any documents to prove their right, but some witnesses deposed to their having long cultivated it at a fixed rent. The moonsiff therefore gave a decree in their favor. The evidence of the witnesses is very inconclusive, they cannot specify precisely the quantity of land in the respondents' possession, nor have they ever seen any documents to lead them to suppose that the rent of the land has been permanently fixed. In the absence of any documents the respondents' claim is clearly untenable. I therefore reverse the moonsiff's decision, and dismiss the claim with costs.

THE 27TH FEBRUARY 1849.

No. 33.

Appeal from the decision of Baboo Poornochunder, Moonsiff of Howlah, dated the 6th January 1849.

Ramdas Thakoor, Appellant,

versus

Moishchunder, the friend of Esanchunder, a minor, Respondent.

THE respondent states that Esanchunder, minor, inherited from his father 1 k. 10 g. of rent-free land, and that, after his death, his mother, to the prejudice of the minor's interests, sold to the appellant 6 g. 2 c. of it, to enable him to dig a tank, and as the minor has no relation he, as a friend of the family, brings this action on his behalf, to cancel the sale.

The appellant states that, wishing to dig a tank, he purchased 12 g. 3 c. 1 k. of land from Musst. Onnopoornah, the mother, and Musst. Sumpoornah, the aunt of the minor; and that the sale is legal, as the mother and son inherit equally agreeably to the shastras; that the respondent, as a friend, has no right to bring this action against him at all, and that his doing so is occasioned by enmity to him, the appellant, and that the digging the tank is beneficial to the minor as it is close to his house.

The case was pending in the moonsiff's court for a year, when he nonsuited the respondent, as he considered him incapable of bringing this action. A summary appeal was preferred to this court, and the moonsiff's decision was, with reference to the peculiar circumstances of the case, reversed, and he was directed to try it on its merits.

As the appellant admitted that he had purchased the land partly from the mother, and partly from the aunt of the minor, the moonsiff deputed an ameen to ascertain whether the land claimed for the minor was situated within the boundaries laid down by the respondent. The ameen reported that 1 g. 2 c. of the land claimed and measured by him in dag 8, belonged to Sumpoornah, and had by her been sold to the appellant, but that the remainder belonged to the minor. In his decision the moonsiff observes that the ameen has not stated how he ascertained that this land belonged to Sumpoornah, and that one Jugmohun Canoongoe, cited as a witness on behalf of both parties, had distinctly declared that the land belonged to the minor, and he therefore gave a decree for 6 g. 2 c. of land ascertained to be within the boundaries laid down by the respondent.

The appellant urges, first, that as friend, the respondent has no right to bring the action; second, that the land was sold by the mother of the minor for his maintenance and the payment of his father's debts; and third, that the decision relative to the 1 g. 2. c. of land has been given in opposition to evidence.

The first plea was decided by the court on appeal in November last and cannot again be entertained. If wrong, the appellant ought to have appealed specially to the Sudder Dewanny. The second plea was not advanced in the moonsiff's court, and cannot therefore be entertained now. The third plea is erroneous. The deposition of Jugmohun Canoongoe, upon which the moonsiff based his decision, is borne out by the evidence of the other witnesses of the respondent, and the ameen has omitted to state the nature of the proof by which he was led to suppose that the land belonged to Sumpoornah and not to the minor. I therefore confirm the moonsiff's decision, and dismiss the appeal. The respondent, who was in attendance without being summoned, must pay his own costs.

THE 27TH FEBRUARY 1849.

No. 35.

Appeal from the decision of Moulvee Motee-oor-Rohoman, Moonsiff of Hatteeah, dated the 30th December 1848.

Kuleemooddeen, Appellant,

versus

Ramlochun, Respondent.

THIS suit was instituted on the 29th December 1845, for 1 g. 1 c. of land, valued, with its mesne profits, at 1 rupee 9 annas. The appellant claims it as forming part of a howalah belonging to him and called Mahomed Keim. The respondent claims it as part of his howalah called Kumlakaunt Sein. Neither of the parties were able to produce any documentary evidence in

support of their claim; and the moonsiff, on the 29th of June 1846, decreed the case in favor of the appellant, as he had produced more witnesses in support of his claim than the respondent had.

This decision was reversed by the judge on appeal, on the 18th December 1846, and the case was remanded for re-investigation. The moonsiff deputed an ameen to measure the land, and he reported that it amounted to 1 g., 1 cog, 5 teel, and belonged to the appellant. The respondent was dissatisfied with this report, and a second ameen was deputed, who reported that the land belonged to the respondent, and consisted of only 3 c., 2 cog, 6 teel, and that he had called upon the appellant to produce any evidence he might have, but that he had omitted to adduce any, and had gone away to his house. The appellant petitioned the moonsiff to depute a third ameen, and he did so, and the ameen reports that the amount of land is 3 c., 3 cog, 15 teel, and is situated in howalah Kumlakaunt Sein, and that there is bund between the two howalahs, the land to the south of which belongs to the appellant, while that to the north of it is the respondent's, and that the disputed land is north of the bund, and the moonsiff accordingly dismissed the claim.

An examination of the measurement papers and maps shews that the disputed land is situated on the banks of a running stream, which changes its course from time to time, and this fact accounts for the difference in the quantity of land recorded by the three ameens. The bund has been recently erected, but will prevent any future disputes. In the present action the *onus probandi* rests upon the appellant, and as he has entirely failed to prove that the disputed land belongs to his howalah, the moonsiff's decision is correct. I accordingly confirm it, and dismiss the appeal. The costs of suit, amounting to more than 17 rupees, must be defrayed by the appellant.

THE 27TH FEBRUARY 1849.

No. 36.

Appeal from the decision of Moulvee Abool Hussein, Moonsiff of Hathazaree, dated the 28th December 1848.

Kumer Ally and Shumshare Ally, Appellants,

versus

Meer Ally, Respondent.

THE respondent states that he cultivates 2 k., 15 g., 1½ c., of land in turruff Kubeer Choor Gool Mahomud, agreeably to a kuboolee ut of Kumer Ally, the surberakar of Musst. Sadutoonnissa, to whom he has paid rent to the year 1205; that in the year 1206 she sold all her interests in the land to Kumer Ally, and that he has consequently paid rent to him and his partner, Shumshare Ally, ever since the date of sale; and that notwithstanding this, Musst. Sadut-

oonnissa has attached his property and taken rent from him for the years 1207 and 1208; and as he paid 8 rupees, 2 annas, 3 pie, more than he ought to do, he brings this action to recover it either from the appellants or from Musst. Sadutoonnissa.

Kumer Ally states that he has purchased from Musst. Sadutoonnissa her interest in the turruff, and that the respondent has consequently paid to him and his partner, Shumshare Ally, the rent he used to pay to Musst. Sadutoonnissa.

Musst. Sadutoonnissa denies that she has sold the land to Kumer Ally, and admits that she has received rent from the respondent.

The moonsiff states, in his decision, that it is clearly proved that the respondent has paid 8 rupees, 2 annas, 3 pie, more rent to the two contending parties than he ought to have done, and as the appellants have omitted to file their deeds of sale, it is clear that they are the parties who have wrongfully taken it, and he therefore decreed the case against them. In appeal, the appellants urge that the deed of sale is in their possession, and that they offered to file it in the moonsiff's court, but that the moonsiff refused to take it, stating that the case was about to be transferred for trial to the moonsiff of Ruwoojan, and that they ought to file it in his court.

The land for which the rent is claimed is admitted by both parties to be in the possession of the respondent, and both admit that they have received rent from him. Previous to the alleged sale to the appellants, the respondent used to pay rent to Musst. Sadutoonnissa, and she denies that she has ever sold the land to the appellants at all. It is necessary, therefore, that the appellants should prove their title, and this they cannot do in the present case. The appellants have been unable to file any kubooleeut executed to them by the respondent, or other agreement to shew their right to take rent from him; and the moonsiff's decision is therefore correct. The appeal is dismissed.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, ESQ., JUDGE.

THE 13TH FEBRUARY 1849.
No. 1 of 1848.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 8th December 1847.

Nubkishen Bose, (Defendant,) Appellant,

versus

Kasseenath Rai Chowdhree, (Plaintiff,) Respondent.

CLAIM, rupees 304-11-10, principal and interest of a bond bearing date the 15th May 1840: instituted the 29th August 1845.

The plaint sets forth that defendant's father, Narain Pershad Bose, formerly mohafiz of the judge's court, borrowed rupees 50 from the plaintiff, and executed a bond on account thereof, on the 20th Phalgoon 1242 U., but never liquidated the loan; and on the 4th Jeit 1247 U., or 15th May 1845, when an adjustment of accounts took place between the parties, a balance of rupees 86-8 was found to be due from defendant, on account of which and the further sum of rupees 100 he then borrowed, he executed the bond for rupees 186-8-0, stipulating to pay rupees 11 monthly out of his salary; but he died in Kartick 1252, without having repaid any part of the loan, and plaintiff therefore sues defendant and his four brothers, the sons and heirs of the deceased, who succeeded to his property.

Of the five brothers, defendants, Nubkishen Bose alone defended the suit, and he pleaded that neither he nor any of his brothers knew any thing about the loan, and that, having inherited no property from their father, they could not be held liable for his debts, and further, that he, Nubkishen Bose, in consequence of differences between himself and his father, separated from him in 1237 U.

The plaintiff adduced three witnesses to prove his claim, two of whom, who are represented to have been witnesses to the execution of the bond, deposed that Narain Pershad Bose himself wrote the document, and that they heard defendant and his brothers inherited his property; and the third stated that he only knew of Soodha Kishen Bose, the eldest son, being in possession of deceased's property, and that Nubkishen Bose always resided at Cuttack.

Four witnesses were examined on the part of the defendant, and they generally corroborated his statement.

The principal sudder ameen, considering the execution of the bond fully proved by the evidence of the witnesses, overruled the objections of the defendant, as to his not having inherited any property

from his father, on the grounds of a proceeding of the Sudder Dewanny Adawlut held on the 24th August 1847, in an exactly similar case, instituted by the present plaintiff *versus* Saoutchurn Das, and the bywastah of the pundit of the 24-Pergunnahs, bearing date the 24th September 1844, in a decree-jarry case No. 140, Chintamonee Mhaintee *versus* Deenbundoo Swain and others, and decreed the suit with costs against the defendant and his absent brothers.

The appellant revives his objections urged before the lower court, and states further that the bond is a fabrication, for Urjun Singh and Hoorsee Rai, the only two witnesses who have deposed to its execution, distinctly stated that appellant's *father* wrote the bond with his own hand, and, that it was not written by *him*, every one knows, as his father was many years mohafiz of the court; also that the bywastah of the pundit referred to by the principal sudder ameen is not applicable to his case, as he had separated from his father many years before his death; and the bywastah is based on the shasters of the Ooriahs, not the Bengalees, to which latter class he belongs. And as it is self-evident, from a comparison of the bond with other records of the office, in the handwriting of Narain Pershad Bose, that the bond was never written by him, and this fact is not only admitted by both of the vakeels of the respondent, but one of them states it to be in the handwriting of one Gunnesham, a *taid* mohurrer about the court, and further, the bond bears the official designation of the deceased, in addition to his name, which is alone sufficient to cast suspicion on its genuineness, I annul the decision of the principal sudder ameen, and dismiss the claim of respondent, with costs of both courts, with interest to the date of liquidation.

THE 13TH FEBRUARY 1849.

No. 17 of 1847.

Appeal from the decision of Turrakaunth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 16th September 1847.

Rajah Chukrabutty Mungrauj Mahapatur, (Defendant,) Appellant,

versus

Bulbudder Mungrauj, (Plaintiff,) Respondent.

CLAIM, 163 buffalos, valued at rupees 1,112, and the reversal of a summary decree under Regulation VIII. of 1831, passed by the collector, on the 17th June, and confirmed by the commissioner on the 5th July 1845.

The plaintiff stated that the 163 buffalos, the cause of action, of which 63 had been sold, and the remainder were about to be sold in execution of a summary decree passed by the collector in favor of defendant against Guddadhur Beerbur, were his, and that they had not been attached, as was evident from the report of the peadah, in which he stated that plaintiff's servants had opposed the attachment

and torn up his perwannah, and likewise from the deputy collector having ordered the rest of the attached property to be sold, for although the deputy collector, on receiving an application from defendant, subsequently directed the sale of the buffalos, he again cancelled his order on plaintiff's remonstrance, and recorded his opinion that the buffalos had not been attached; nevertheless, on the defendant's appealing to the collector, he ordered the sale of the buffalos, and his order was finally confirmed by the commissioner, and he therefore instituted the present suit against defendant (appellant,) the heirs of Guddadhur Beerbur, and the purchasers of the 63 buffalos.*

The defendant (appellant) replied that the buffalos belonged to Guddadhur Beerbur, and that he had caused them to be attached with the rest of his property, and he had established these two facts to the satisfaction of the collector and the commissioner, who had set aside the proceedings of the deputy collector, and therefore his order, releasing the buffalos from sale, could not be admitted as proof that they had not been attached.

Sattabhama Dey and Soorjnarainee, the heirs of Guddadhur, deny both the claim made by defendant (appellant) against Guddadhur, and that preferred by the plaintiff against them; and the purchasers, the other defendants, merely assert that the buffalos belonged to Guddadhur, and when they were sold by order of the collector, they purchased them.

The principal sudder ameen, in summing up, states that there is no other proof of the claims of either party, than the evidence of their respective witnesses, who have all deposed to the facts they were called on to establish; and two witnesses in the summary suit deposed that Guddadhur Beerbur formerly had some buffalos, and that he purchased 60 buffalos from Bulbudder Mungrauj, the plaintiff, but neither from the evidence in the present or former case, is it established to his satisfaction that Guddadhur purchased the 60 buffalos; and though it was to be inferred that he purchased some buffalos, the number was less than the 60 alleged to have been purchased by him; and as it could not be ascertained how many he had originally, and how many had been bred from them, he concluded that the greater number of the disputed buffalos belonged to the plaintiff, and the smaller number to Guddadhur, and consequently decreed the 63 buffalos, which were sold in execution of the summary decree, to be the right of the purchasers (defendants,) and the remaining 100 that of the plaintiff; and as respects costs, that the plaintiff was to reimburse the purchasers, with interest to the date of payment, and the other parties were to pay their own costs, with the exception of the minor daughter of Guddadhur deceased.

Against this decision, Rajah Chukrabutty Mungrauj appealed, stating that it was altogether based on conjecture, and repeated the objections made by him to the plaintiff's claim before the lower court. And, after a careful perusal of all the records, both in the

summary and regular suits, it appears that, although the respondent asserts that the buffalos are his, and that they were not attached, the very document to which it refers in support of his claim, viz. the report of the peadah, who went to attach the buffalos, tends to controvert his statement, for he therein reports that, while he was in the act of attaching them, the respondent's servants collected and forcibly carried them off; and it was only necessary, for the object in view, that the peadah should proclaim them attached by authority; and that this was done is not only evident from people collecting to carry them off, but the respondent does not deny their having opposed the attachment; moreover, the peadah deposed under solemn declaration that he attached the buffalos, and made them over to Narain Mahapatur and Bhaig Mullick; and they, in like manner, deposed, that they were in their charge when they were carried off; therefore, notwithstanding there are discrepancies between the evidence given by the two last named individuals before the collector and the principal sudder ameen, it is to be inferred that the attachment really took place; and the question that remains to be decided is, whether the buffalos belonged to the respondent or Guddadhur Beerbur, in execution of the decree against whom the appellant caused them to be attached; for it is clear from the evidence of both parties, that they did not, as decided by the principal sudder ameen, belong partly to both, and the preponderance of the oral evidence, as well as the documents filed in the summary suit by the appellant, is decidedly in favor of their belonging to Guddadhur Beerbur. And as the respondent has failed to adduce any further proof of their being his, than that filed before the collector, I see no reason whatever for disturbing the proceedings of the revenue authorities; and therefore order that the decision of the lower court be reversed, and the claim of the respondent dismissed with costs of both courts, with interest to the date of realization; also ordered, that copy of this order be sent to the collector for his information.

THE 16TH FEBRUARY 1849.

No. 3 of 1848.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen, dated 29th December 1848.

Nityanund Rai, (Mozahim,) Appellant,

versus

Radha Gobind Singh, (Plaintiff,) and Koornamaie Dassee, mother and guardian of Gornohun Palit and others, (Defendants,) Respondents.

CLAIM, possession of 17 ghoonths 10 biswas of resumed khureedah maafee land, situated in mouzah Poorsuttumpore, pergunnah

Burrooah and the trees thereon, with *wasilat* from 1248 to 1253 U., valued at rupees 62-8-6, and to have his name recorded as proprietor in the collectorate records.

Plaintiff states that, when the land in dispute was measured previous to settlement, it was in the possession of Jugomohun Palit, who inherited it from his ancestors, and he having subsequently died, the kubooleeut was executed by Koornamaie Dassee, in the name of her eldest son, Gormohun Palit, and that on the 3rd Chyte 1248 U., the said Koornamaie Dassee sold it to him for rupees 30, to satisfy a decree passed in favor of Manikram Singh, who had caused the land to be attached, and executed the kubalah under which he sued.

The defendants confess judgment, and brought forward several witnesses and documents to prove that the land belonged to them.

Nityanund Rai, mozahim, opposed the claim, and stated that the land in dispute was granted by his ancestor, Beenud Ram Rai, to the grandfather of Jugumohun Palit, on the occasion of marriage with his daughter, as mheteran, or dwelling-house land, on condition that he was not to alienate it; and in consequence of Jugumohun Palit's having sold it to Hurry Jenna, in opposition to the prohibition, the father of the mozahim opposed the occupation of it by Hurry Jenna, and took and retained possession of the land.

The principal sudder ameen being satisfied from the evidence of the witnesses, the pottah granted by the deputy collector, and the receipt for the rent of the land filed by Gormohun Palit, that the land was in the possession of defendants, and the mozahim having been unable to adduce any proof of his assertion that the land was granted with the restriction that it was not to be sold or otherwise disposed of, except a copy of a hibahnamah, which had never been verified in any court of justice and all the witnesses to which are dead, decreed the suit in favor of the plaintiff, and directed that the mozahim was to pay his own costs, and that those of the plaintiff were to be defrayed by the defendants.

Although the appellant alleges that the land in dispute was granted by Beenud Ram Rai to defendants' grandfather, as mheteran, on condition that he was not to alienate it, and he has filed copy of a hibahnamah, the original of which he states was executed by Beenud Ram Rai in 1210 U., in which it is recorded that he had given 11 beegahs 7 ghoonths of mheteran land to Duttaram Rai, and certain witnesses have deposed that mozahim's father took possession of the land in consequence of Jugumohun Palit's selling it to Hurry Jenna, neither his assertion nor the evidence of the witnesses can be relied on, because the defendants claim only 17 goonths 10 biswas of land, or less than one-tenth of that recorded in the hibahnamah, and if they could not alienate the land in consequence of its being mheteran, they should still be in possession of the larger quantity. And that appellant's father did not resume or

take possession of the land, in consequence of Jugumohun Palit's selling it, is quite evident from the fact of his widow and sons, the defendants, having been in possession, according to the evidence of appellant's own witnesses, two or three years after Jugumohun Palit's death. I therefore see no reason whatever to disturb the decision of the principal sudder ameen, which is hereby affirmed, and the appeal dismissed. The respondents, having appeared unsummoned, will pay their own costs.

THE 16TH FEBRUARY 1849.

No. 7 of 1848.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen, dated 29th April 1848.

Sree Gunesh Missur and Musst. Soorjee, mother and guardian of Gungadhur Missur, (Defendants,) Appellants,

versus

Bhageerutty Das, (Plaintiff,) Respondent.

THIS suit was instituted by respondent to recover the sum of rupees 725-5-4, alleged to be due on a kut kubalah, or foreclosed deed of mortgage, bearing date the 19th Bysakh 1242 U., on the grounds that rupees 259-0-3-8, in part of the sum on account of which the bond was executed, had been liquidated.

Defendants (appellants) replied that the whole claim had been adjusted by the payment of the amounts of two decrees, and the reversal by the judge of two other decrees, on account of which the bond was executed, and further that, under Construction No. 898, respondent could not sue for the amount of the bond or part of it, instead of the mortgaged property.

After hearing the pleadings, the principal sudder ameen dismissed the claim, and ordered that the costs of appellant were to be paid by respondent, but stated further that his decision did not affect the validity of the kubalah; and if it was a genuine document, respondent was at liberty to adopt such measures in connection with it, as were conformable to the Regulations. And against this latter part of the principal sudder ameen's decree, the appeal has been preferred, the appellants urging that his pointing out to the respondent that he had power to adopt measures in connection with the kubalah, rendered them liable to further litigious proceedings on a document already void, and that his doing so was a contravention of the Sudder Court's Circular Order, No. 33, of the 13th September 1843. And deeming the objections of the appellants to be valid, I hereby annul so much of the principal sudder ameen's decree as makes allusion to the validity or otherwise of the kubalah, and the power of the respondent to institute proceedings on the strength of it, and direct that the costs of appeal be paid by respondent with interest to date of liquidation.

THE 17TH FEBRUARY 1849.

No. 2 of 1848.

Appeal from the decision of Tarrakaunth Bidya Sagur, Principal Sudder Ameen, dated 27th December 1847.

Mohunt Permanund Das, (Plaintiff,) Respondent,

versus

Rajah Oopinder Bhooputty Hurry Chundun Mahapatur, and Musst. Goondicha Dey, his mother and guardian, (Defendants,) Appellants.

CLAIM, right of possession of mouzahs Kundadpal and Radooahpal, in the estate killah Sookindah, as farmer, at a permanent rent of rupees 44, with mesne profits from 1245 to 1253 U., at the rate of rupees 51-0-8 *per annum.* Suit laid at rupees 900, 6 annas, 9 pies, 12 krants.

The plaintiff stated that his grandfather's gooroo, Mohunt Gobind Das, had extensive money transactions with Rajah Mirtinjye Bhooputty Mahapatur, the former zemindar of killah Sookindah; and that the rajah, in liquidation of the sum of rupees 18,000, which was due by him to the said Mohunt Gobind Das, executed in his favor a bai kubalah, on account of the two villages in dispute, on conditions that Gobind Das was to pay the rajah rupees 44 annually; and that his grandfather, his father, and himself, successively held possession till 1245, (the last ten years of which period the estate was under management of the Court of Wards,) when the present Rajah Oopinder Bhooputty Hurry Chundun, defendant, on coming of age, together with his mother, dispossessed him; and that he first sued in the court of the sudder ameen for the proprietory right to the villages, when defendant pleaded that he only held them as farmer, and his suit was dismissed on the 29th April 1847, and he was informed that he might institute fresh proceedings to obtain possession as farmer, and he had consequently done so.

The defendant urged that, as plaintiff had first laid claim to the villages, as his right by purchase, and on his being unable to establish the fact his suit was dismissed, his present claim to possession as farmer was inadmissible; and he further denied that he had ever admitted plaintiff's right to hold them on lease in perpetuity, but he failed to file any proof, or to adopt any measures, to dispose of the claim.

The principal sudder ameen decreed the suit, on the grounds that defendant, in his answer, filed in the suit instituted by plaintiff, before the sudder ameen, had admitted plaintiff's heriditary title to hold the villages as farmer, and defendant had neglected to adopt any measures to disprove his claim, and declared the plaintiff entitled to hold possession of the villages, so long as he continued to pay the rent, but stated that he did not consider him entitled to *wasilat,* and

therefore the costs, which were made payable by defendant, with interest to date of realization, were to be adjusted accordingly.

Against this order the defendant appealed, repeating the objections urged by him before the lower court. But since it is quite evident from his answer, filed in the suit instituted in the sudder ameen's court, that respondent's ancestor obtained possession of the villages in the time of Rajah Mirtinjye Bhooputty Mahapatur, the grandfather of appellant, and that he and his successors continued in possession, according to appellant's statement, till 1243, and according to that of respondent until 1245, when appellant came of age, and appellant omitted to adopt any measures to disprove respondent's claim while the suit was pending before the principal sudder ameen, I hereby confirm his decree, and dismiss the appeal, with costs and interest thereon to the date of payment.

THE 26TH FEBRUARY 1849.

No. 6 of 1848.

Appeal from the decision of the Principal Sudder Ameen, Tarrakaunth Bidya Sagur, dated 29th April 1848.

Muddoo Soodun Bose, (Plaintiff,) Appellant,

versus

Gopeenath Puhraj and others, (Defendants,) Respondents.

PLAINTIFF sued to render absolute the conditional sale of talook Nehalpore, effected in his favor by Sadoo Churn Byregunjun, deceased, the father of Bidyadhur Byregunjun and Jugbundoo Bissoee, on account of a debt of rupees 2,957-7-14-2, for which he executed a bye-bilwufah kubalah, bearing date the 26th September 1826, the conditions of which were that plaintiff should hold possession of the estate in question from 1234 to 1242 U., both inclusive, and after defraying the Government revenue, the expenses of management, and a certain allowance for the maintenance of the zumeendar, Sadoo Churn Byregunjun, appropriate the surplus profits in liquidation of the debt; and if any balance was due to plaintiff, at the expiration of the specified period, Sadoo Churn Byregunjun was to pay the same and redeem the estate; and if, within that time, Sadoo Churn dispossessed, or in any way disturbed the possession of the purchaser, and he was in consequence unable to realize the amount due to him or any part of the same, he was empowered to sue for the foreclosure of the mortgage, under Section 8, Regulation XVII. of 1806; or if the purchaser, after realizing the amount due, refused to deliver up possession of the property to Sadoo Churn Byregunjun, he, in like manner, was at liberty to sue for its recovery, under Section 7 of the said Regulation, and as plaintiff had realized no part of the debt due to him during the time in possession of the estate, he therefore sued Gopeenath Puhraj, who subsequently purchased 12 annas, and at

present holds a farming lease of the remaining 4 annas of the estate, in conjunction with Bidyadhur Byregunjun and the other defendants. Suit laid at rupees 704-9-10.

The defendants, with the exception of Gopeenath Puhraj, the purchaser and lessee of the property, confessed judgement in the present suit, though they denied the claim of the plaintiff and filed petitions of objections when notices of foreclosure were issued; and Gopeenath Puhraj pleads that, in consequence of plaintiff having failed to prove that the second condition of the deed of sale was infringed, he possesses no right to the estate. The principal sudder ameen pronounced that the claim of foreclosure could not be maintained on the first condition of the deed of sale, because the plaintiff had held possession of the estate during the period specified in the deed, and could, consequently, only claim any balance that might be due; and with respect to the second condition, which was the only one on which a claim of foreclosure could be sustained, it had not been shown to his satisfaction that the condition had been infringed, and that Sadoo Churn Byregunjun, the seller, had disturbed the possession of the plaintiff, although the canoongoe of pergunnah Sooknye had reported, in November 1833, that Sadoo Churn had collected some of the rents of 1237 and 1238; and as plaintiff had not petitioned to foreclose the mortgage until long after the expiration of 1242, and the estate had been sold to the defendants, he dismissed his claim, and made him liable for the costs of all parties to the suit. And against this decision plaintiff appealed, urging that, as the amount lent by him to Sadoo Churn Byregunjun, had never been repaid, he was entitled on the general conditions of the bye-bilwufah kubalah to the possession of the estate. Neither the real intent nor the general conditions of the deed of sale can be set aside by any conjectural interpretation of them; and not only the *second*, but all the conditions of the deed must be taken into consideration in pronouncing on the nature of the deed; and as it distinctly purports itself to be a bye-bilwufah kubalah, or conditional deed of sale, and was duly registered as such, it must be upheld, and considered good, until the money lent upon it is repaid. Whether it has been repaid or not? is the question which remains for investigation; but if only the second condition of the deed entitles it to be considered as a bye-bilwufah kubalah, I then consider that appellant has adduced proof to show that his possession was disturbed, and Sadoo Churn Byregunjun himself admitted, in a petition presented to the collector in August 1232, that he had not realized the money. It is therefore ordered, that the decision of the principal sudder ameen be reversed, and the case be remanded to his file for investigation of the point above indicated. The usual order for the refund of the value of the stamp of appeal, issued.

ZILLAH DACCA.

PRESENT: HENRY SWETENHAM, ESQ., JUDGE.

THE 3RD FEBRUARY 1849.
No. 56 of 1846.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Meer Gholam Hossein, Kishenpershaud Doss, Gooroo Churn Doss, and Radachurn Doss, (Defendants,) Appellants,

versus

Mussumaut Noorunnissa *alias* Beebee Cholonee, on her demise, Syed Mahomed *alias* Mujla Meerun, and Ramdoolub Bhose, (Plaintiffs,) Respondents.

Vakeels of Appellants—Puddum Lochun and Petamber.

Vakeels of Ramdoolub, Respondent—Gour Chunder, Jugmohun, and Nundlaul.

Vakeel of Syed Mahomed, Respondent—Ameeroodeen.

SUIT for possession of talooq Goopee Rae, qismut Haroondeea Meeroor, with wasilat, rupees 418-6-4½.

Plaintiffs stated this property was gifted by Meer Hossein to Noorunnissa *alias* Neemjote, his wife, in lieu of dower, that Hoorunnissa, one of the plaintiffs, succeeded to the property by will from her sister Noorun, and Hoorun sold the property to Ramdoolub, the other plaintiff.

Defendants denied. Meer Gholam Hossein, one of the defendants, was the son of Meer Mahomed Hossein. He states he succeeded to his father's property, and on his demise he continued in joint possession of it with Noorunnissa; that he was a minor when his father died in Chyte 1232, but before his death he had appointed Meer Ramjaun Allee, guardian to his minor son. In 1236, Noorunnissa died childless. There is no such person now existing as Hoorunnissa, but there was a slave girl of that name in the house of one Mujla Meerun she died three or four years ago. When Noorunnissa died, the said Mujla Meerun and Ramjaun Allee, the guardian, collusively concealed the will of Meer Hossein, and fabricated another will on behalf of Noorunnissa. In the year 1242, however, Meer Gholam Hossein, defendant, became of age: he took possession of all his father's talooqs: talooq Goopee Rae, the one now litigated, he transferred by hereditary pottah to one Brijnauth, who again conveyed it by sale to the three Dosses, defendants.

The sudder ameen, on a review of the documents, filed by the parties, and of former decrees, passed in the moonsiff's and principal sudder ameen's courts, Nos. 10124 and 1146, decreed to plaintiffs, the 17th November 1846.

Defendants dissatisfied, appealed. The petition of appeal and answer thereto, merely repeat the pleas argued in the lower court. The points at issue in this case have been already determined by a decision in the principal sudder ameen's court, No. 10124. It was therein decided that Meer Gholam Hossein was not the heir and successor to his father's property; that it was gifted to Noorunnissa. By Section 16, Regulation III. 1793, that point must be held finally disposed of. That decision therefore saps the foundation of appellant's claim. The appeal is dismissed, the sudder ameen's decision affirmed: appellant to bear the costs.

THE 3RD FEBRUARY 1849.

No. 48 of 1847.

Appeal from the decision of Meer Abas Allee, Principal Sudder Ameen of Dacca.

Chytun Kishen Paul, representative of Terloo Churn and Prem Chand Koond, (Defendants,) Appellants,

versus

Sheeb Chunder Rae, (Plaintiff,) Respondent.

Vakeels of Appellants—Nund Laul and Puddum Lochun.

Vakeels of Respondent—Gour Chunder, Gholam Abas, and Anund Mohun.

SUIT to recover possession of one dhoon of land, including land and tenements in qismut Tamtar, hawala Raj Kishen, from which the plaintiff had been ejected by the defendants, the 28th Bysack 1251 B. S., value rupees 1,075, and wasilaut from said date to the 14th Poos 1251, rupees 100, total rupees 1,175.

Plaintiff stated, he held a dakhilee hawala named Raj Kishen Raee in qismut Tamtar, included in talooqa Kewul Kishen, jumma assessed before decennial settlement rupees 6-8. He and his family had been seised thereof three generations. Hurree Deb Rae was the original acquirer, his uncle, Raj Chunder Rae, succeeded him; and plaintiff was next in succession on the jumma aforesaid.

Some portion of his hawala had been sold, but one dhoon, the site of his house, and a small cultivation remained to him.

Defendants, twelve or thirteen years ago, purchased at a public sale the talooqa named Raj Kishen Raee, jumma 1,146-1-17, and possession thereof was given to them by an ameen of court.

Twelve or thirteen years after the said purchase, they took forcible possession of claimaints' hawala, asserting it was part of their purchase.

Plaintiff failed to recover the property through the criminal court, and was compelled to sue for re-possession in the civil court. In 1219, the talooqa had been sold to Ram Chunder Doss, but he never

disturbed plaintiff in his possession, and defendants never claimed this hawala when the ameen gave possession of the talooqa sold at auction.

Defendants answered: plaintiff, his ancestors, and co-sharers, were the zumeendars of Bikrampore; at the decennial settlement many talooqdars separated from Bikrampore. Talooqa Lukeenarain Rae, jumma 33-6-17, and other talooqas, altogether 13 talooqas, were formed into one zumindaree on a jumma of rupees 1,146-1-17. Bhowanee Churn Rae and others were recorded zumindars thereof: afterwards, by a mutation of names, Raj Kishen Rae became the recorded zumindar. The talooqa of Lukeenarain Rae, father of the plaintiff, jumma 33-6-17, was included in that zumindaree. On that talooqa plaintiff's ancestor built a house, the family have continued to reside there, plaintiff's ancestors long ago resided in that place. They were great zumindars, and were not likely to render themselves the ryuts of another. The estate was exposed to sale for arrears of revenue, Issur Chunder and Prem Chunder purchased at public sale, Issur Chunder's 8 annas share was privately transferred to Terloo Churn, and by him again to Chytun Kishen. They (the defendants) have had possession of the property now contested since 1249. They had not taken possession thereof for some years after the purchase, because plaintiff had verbally promised to pay rent.

The principal sudder ameen observed that the plaintiff and his ancestors had occupied the land under dispute for years, without any molestation, a fact admitted by the defendants. Defendants asserting the said land to have been included in their purchase, had oppressively and wrongfully turned the plaintiff out of his residence without the intervention of constituted authority: they should have sued for the land, or demanded rent if they had any claim. By dint of wealth and power ejecting the plaintiff, poor and helpless, from his tenure, upwards of twelve years from the date of sale of Raj Kishen Rae's zumindaree, was an unjust and illegal act of the defendants. The principal sudder ameen accordingly decreed to the plaintiff, the 23rd November 1847.

Defendants have appealed. Their pleas have been duly considered, as well as the respondent's answer, and the documents of both parties have been examined.

The case presents a scene of tyrannic oppression. It is one of ouster, or dispossession by disseisin, a wrongful putting out of respondent, who was seised of the house and land. Appellants took forcible possession of the respondent's hawala, without right or title proven, twelve years after they acquired the zumindaree, to which they alleged it appertained. The sale took place in 1239 B. S., the ejectment in 1251. The respondent had *jus possessionis*, a possession transmitted from his ancestors. Appellants were under no legal disabilities from non-age or other circumstances to prefer their claim legally. Respondent had presumptive *primâ facie* evidence of right,

his possession was not liable to be overturned by the forcible entry of appellants, but only by their shewing a better right in course of law. Appellants have now endeavoured to prove their right to the contested property, that is to say, more than thirteen years after the cause of action arose. The sale was made in 1239. This suit was instituted by respondent in 1252. The documentary proof is in favor of the respondent. The respondent declares his hawala is in the talooqa of Kewul Kishen, and he produces an attested copy of the quinquennial papers of talooqa Kewul Kishen for 1209 B. S., in which the hawala of Raj Kishen, qismut Tamtar, is duly entered. It is true, the original bore not the signature of official authority, but there appear no just grounds for denying its authenticity. Appellants, on the other hand, maintain that an ism-nuveesee mouzawaree of 1217 B. S., shews the contested property to belong to the zumindaree they purchased. That document shews an hawala Raj Chunder, Sheeb Chunder Rae, named Ram Chunder Surma, but Raj Kishen's hawala is not apparently included in it. It is included in the talooqa of Kewul Kishen. Even if appellants' claim were not barred by the provisions of Section 14, Regulation III. 1793; judging the case on its merits, the right to the property at issue is the respondent's.

Two errors require to be noticed in the principal sudder ameen's decision; first, he styles Rajkishen, the father of plaintiff; second, that from the documents filed it is clear the hawala is registered in the names of Sheeb Chunder and Raj Chunder. Setting aside these two points, the decree of the principal sudder ameen is affirmed, and the appeal dismissed.

The parties to be charged with costs, respectively, as respondent was not summoned.

THE 5TH FEBRUARY 1849.

No. 5 of 1846.

Appeal from the decision of J. Reily, Esq., former Principal Sudder Ameen of Dacca.

Chytunkishen Paul, for himself and guardian of Musstn. Lukhee and Munnee, widows of Bungo Chunder, Gobind Chunder Paul, and Annund Mohun Paul, the three abovenamed persons, guardians of Muhes Chunder Paul, minor, (Plaintiffs,) Appellants,

versus

Musst. Pearee, widow of Gooroopershaud, Hurreepershaud Shah and Muthoorakaunt Shah, (Defendants,) Respondents.

Vakeel of Appellants—Rammunnee Bhose.
Respondents—Defaulting.

SUIT to recover rupees 2,206-10-8, balance of accounts. 17th January 1846. Principal sudder ameen decreed against Muthoorakaunt Shah, and exonerated the other two defendants.

Plaintiff appealed to extend the liabilities to the persons exempted.

On the 24th February 1848, the appeal was dismissed for neglect under Act XXIX. of 1841. The Court of Sudder Dewanny Adawlut, under date the 12th June 1848, restored the case to its original number on the judge's file to be tried on its merits. Notice served on Musst. Peearee and Hurreepershaud, respondents, who failed to appear in person or by vakeel, therefore the appeal has been tried *exparte*.

From the answer of Muthoorakant Shah, as one of the defendants in the principal sudder ameen's court, from the evidence of the witnesses examined in that court, as from an examination of appellants' khata buhee, it is clearly to be deduced that in 1245 and 1246 Musst. Peearee carried on business in the name of her deceased husband, Gooroopershaud. In 1247, her son's name, Hurreepershaud, then a minor, was entered in the khata, together with that of Gooroopershaud: in that year Motee Shah was their gomashtah, and a balance of rupees 1,000 appeared against them at the close of 1247, which was carried forward to account in the khata of 1248. In 1248 Muthoorakant Shah became managing gomastah, and continued so until business was closed in 1249. Hurreepershaud became of age in 1248. The principal sudder ameen objected that Muthoorakaunt Shah was not empowered to act or carry on business for Musst. Peearee and her son, but it has been ruled, Construction No. 75, that a managing gomastah may conduct business for a firm without power of attorney, and that the principals are responsible for his acts, *vide* precedent, case decided by the Sudder Dewanny Adawlut, 27th April 1848, Gour Chunder, appellant, *versus* Hoolassee and others, respondents. Muthoorakant Shah has not appealed from the decree passed against him solely by the principal sudder ameen. There appear no grounds for exonerating Musst. Peearee and Hurreepershaud Shah. Therefore, in amendment of the principal sudder ameen's decision, the appeal is decreed, and Musst. Peearee and Hurreepershaud Shah will be held liable with Muthoorakant Shah to the payment of the amount decreed to appellants. Peearee and Hurreepershaud to bear the costs of appeal. Had Muthoorakaut Shah carried on business for himself only as supposed by the principal sudder ameen, as he commenced only in 1248, why should he have saddled himself with the balance of account for 1247, viz. rupees 1,000?

THE 7TH FEBRUARY 1849.

No. 2 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Sheikh Asmutoollah and Sheikh Akber, (two of the Defendants,) Appellants,

versus

Goluknarain Chowdhree, (Plaintiff,) Respondent.

Vakeel of Appellants—Petumber Sein.

Vakeel of Respondent—Hurree Kishore.

To recover the amount of a bonded debt, Sicca rupees 500, with interest, total Sicca rupees 720-6-13-1, or Company's rupees 768-6-6.

The suit was instituted the 19th December 1846. The claim being fully proved, the sudder ameen decreed the amount on the 18th January 1848, against the two defendants abovenamed, Sheikh Kurreemoollah, and the heir of Sonaoollah.

After perusal of the record of the original suit and the petition of appeal, in the presence of the appellants and respondent, there appears no reason to alter the decision appealed from. It is accordingly confirmed, and the appeal dismissed. As respondent was not summoned, the parties to be charged with their own costs in appeal.

THE 9TH FEBRUARY 1849.

No. 25 of 1847.

Appeal from the decision of Syed Abas Allee, Principal Sudder Ameen of Dacca.

G. Ashburner, Esq., of the Firm of Messrs. Macintyre and Co., (one of the Defendants,) Appellant,

(Mr. A. B. Martin and Mr. F. C. Imbert, Agents of Messrs. Macintyre and Co., Defendants, who have not appealed,)

versus

Bulram Podar and Musst. Ootima, (Plaintiffs,) Respondents.

Vakeel of Appellant, Hurree Kishore Roy.

Rammonee Bhose and Moulovee Ameenuddeen, absent.

Vakeel of Repondents, Nund Lal.

SUIT to recover the amount of a draft, rupees 1,733-8, including interest.

The amount was decreed by the principal sudder ameen on the 29th April 1847. G. Ashburner, Esq., on the part of the firm of Messrs. Macintyre and Co., appealed. On the 6th July 1848, the appeal

was dismissed for neglect, under the provisions of Act XXIX. of 1841. Review of judgment was applied for, the 15th July, and sanctioned by the Sudder Dewanny Adawlut, 27th July 1848. The appeal stands for judgment on its merits. The plaint sets forth that Messrs. Macintyre and Co. are the proprietors of Seraj Gunge indigo concern; that Messrs. Martin and Imbert were the managing agents thereof. They drew on the house a draft for rupees 1,500, the 4th August 1843, which plaintiffs, according to custom, cashed, and presented to Messrs. Macintyre and Co., to recover the amount. The cash was expended on the concern and the indigo (produce of the year 1843,) was forwarded to Messrs. Macintyre and Co. They refused to accept or to honor the draft, though they had previously honored many drafts similarly drawn.

G. Ashburner, Esq., a partner of the firm of Messrs. Macintyre and Co., answered that Mr. Coull was proprietor of the Seraj Gunge concern. He was indebted to their house, and, in lieu of debt, had transferred to them the proprietary right. Messrs. Martin and Imbert had taken the concern into their own hands, and carried on business on their own account. They were not concerned with the firm, they were not empowered to draw on them, and the firm had not honored their draft.

Plaintiff replied, Messrs. Macintyre and Co., defendants, had admitted in another case that Messrs. Martin and Imbert were their agents, and they filed copy of the case in proof.

G. Ashburner, Esq., on the part of the house, rejoined that the indigo season was concluded in July, the draft was drawn the 10th August 1843, and Messrs. Martin and Imbert left off business in September 1843, it was evident, so large a sum as that claimed could not have been expended on the concern in so few days, especially after the season had closed.

The principal sudder ameen gave judgment as follows:—It was proved by three Bengallee letters, dated 10th August 1843, the 15th Aughun, and the 31st August 1843', by the roobakaree of the Mymensing court, dated the 8th June 1844, and the evidence of witnesses, named Tara Chand, Madub Chunder, Gooroo Doss, and Fuqueer Chand, that Messrs. Macintyre and Co. were proprietors of the Seraj Gunge concern, that Messrs. Imbert and Martin were their managing agents, that these drew on the house the draft of rupees 1,500, dated the 4th August 1843, for the benefit of the concern, that the money was expended for the benefit of the proprietors, who had also received the produce for the year 1843.

It is proved the firm always previously cashed drafts similarly drawn. Regarding the draft under consideration, they called on their agents to explain the cause of their exceeding their estimate, who replied, the 2nd September 1843, it was absolutely necessary, therefore they hoped they would not object to pay the draft. To prove the necessity of their drawing, they forwarded to Messrs. Macintyre

and Co. the account current. Noticing the above and some minor points, the principal sudder ameen decreed the amount.

In appeal Mr. Ashburner, on account of the firm of Messrs. Macintyre and Co., repeats the pleas advanced in the lower court, and urges, that Messrs. Martin and Imbert were not empowered to draw on them, that Gooroo Doss, witness, had deposed the amount of the draft was not expended on the indigo concern, that Messrs. Martin and Imbert engaged orally to carry on the indigo concern for their own benefit, making Messrs. Macintrye and Co. only their agents, that these gentlemen were indebted to them, and they were prepared to sue them, they had declined to accept their draft, and they had claims on them as well as the plaintiff. The evidence of Gooroo Doss, witness, was the only proof appellant had to advance in support of his pleas, and that evidence, in its own nature, seems incredible. It is clearly proved that Messrs. Macintyre and Co. were the proprietors of the Seraj Gunge concern, that Messrs. Martin and Imbert were their managing agents, that they had drawn on this occasion for the benefit of the concern, and that the house received the indigo produce of 1843. On the good faith of the house, respondents had cashed their agents' draft according to custom. It is not necessary that the agents should be formally empowered to draw, and for their acts the principals must be held liable, *vide* decision of the Sudder Dewanny Adawlut in the case of Gour Chunder *versus* Hoolasee Shah, dated the 27th April 1848. There appears no just grounds for altering the decision of the principal sudder ameen, which is hereby affirmed, and the appeal dismissed; but as the respondents were not summoned, the parties will bear their own costs respectively in appeal.

THE 16TH FEBRUARY 1849.

No. 142 of 1848.

Appeal from the decision of Kallee Kinker Sein, Moonsiff of Naraingunge.

Moulvee Mahomed Nazim Khan, (one of the Defendants,) Appellant,

(Madhub Chunder and five others, Defendants, who have not appealed,)

versus

Gobindpershaud Surma Bhuttacharj, (Plaintiff,) Respondent.

Vakeels of Appellant, Nund Lal, Gholam Abas, Ameerooddeen, and Gholam Mustopha.

Vakeels of Respondent, Puddum Lochun and Rammonee Bhose.

SUIT to recover possession of a mehal julkur nullah Dusaeel, rupees 150.

The plaintiff sets forth that defendants had ousted him from his hereditary tenure in nine banks, or nine turns, in nullah Dusaeel, since 1250, and sued for re-possession.

The appellant, as defendant, answered, the part of the nullah claimed is named Katakhalee from having been cut by his wife's ancestors. They had possession since 1234 B. S., portion by inheritance, and part belongs to his minor son, Abdool Mozuffer Abdoollah Meer, by purchase, and he was in possession. In 1252 the talooqa was farmed for four years to Mr. J. P. Wise. The farmer had not been made defendant. The suit was barred by statute of limitation.

On the strength of five kubooleeuts and the evidence of three witnesses, who deposed on behalf of the plaintiff, the moonsiff, rejecting the proofs of defendant (appellant,) who filed eight kubooleeuts and collectorate and foujdarry documents, and had three witnesses, who deposed on behalf of the defendant, decreed the plaintiff's claim.

Moulvee Mahomed Nazim Khan has appealed, and respondent has answered his pleas.

It appears that the five kubooleeuts of respondent were verified by one witness only, named Rutton Joy Maloo, but as the said kubooleeuts are for different years, wide apart, extending from the years 1231 to 1246, the witness's deposition bears not the impress of credibility.

Appellant pleads that Ameeroodeen Bhorma Beoparree petitioned the collector for a tenure in this khal, as a khass mehal sota of the Bhorragunga. Appellant's son's uncle (Ally Afzul) opposed. On that occasion respondent was a witness, but he did not deny his son being proprietor, and in possession.

The mocurruree ameen, by local inquiry, ascertained the appellant was proprietor of the disputed portion of the khal.

From the local position of the portion of the nullah disputed, in the absence of all documentary proof to the contrary, there can be no doubt of the right being vested in the appellant. The khal is of inconsiderable width, and the land on both sides, for the whole length disputed, is in undisputed and undisturbed possession of the appellant, as far as the potail road. There the property of the respondent is contiguous, and his lands lie on each side of the said nullah, which there apparently assumes the name of Dusaeel, whilst it apparently bears the name of Katakhalee through the appellant's lands. On these grounds, and on the proofs filed by defendant (appellant,) the decision of the moonsiff is reversed, and the appeal decreed. The respondent to bear the costs.

ZILLAH DINAGEPORE.

PRESENT: J. GRANT, ESQ., JUDGE.

THE 2ND FEBRUARY 1849.

No. 15 of 1847.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteeram, dated the 12th December 1846.

Ruhumoollah Sircar and Ajeeboollah Mundul, (Defendants,) Appellants,

versus

Jhapra, (Plaintiff,) Respondent.

CLAIM, rupees 60-5-7, the value of 5 kawuns of straw with paddy, attached on the pretence of its being the property of Goomroo, and not returned to the plaintiff according to the kazee's order for its release. The defendant Ruhumoolla (ijaradar) states that he attached the property of his ryut, Goomroo Haree, and not that of the plaintiff. The defendant Ajeeboollah (in whose charge the property was placed) states that when the plaintiff brought him the kazee's order for the release of 5 kawuns, he told him that he had only 2 kawuns in his charge, and referred him to the attachment papers in the kazee's office, since which time he has not seen the plaintiff; and further that he had heard and could prove that the plaintiff had got possession of his adyaree dhan, (grown by his adyar Jhapra Pullee.)

The moonsiff decreed the case, on the evidence for the plaintiff, to 5 kawuns having been attached, and its being still unsold, which it would not have been had it actually been the property of Goomroo. The moonsiff overruled the attachment papers, showing only 2 kawuns, as conjectural. The defendants not having made out their case, I see no reason to interfere with the moonsiff's decision, and therefore dismiss the appeal with costs.

THE 3RD FEBRUARY 1849.

No. 259 of 1847.

Appeal from the decision of Rowshun Ali, Acting Moonsiff of Putneetullah, dated the 21st July 1847.

Kassichurn Khan and others, (Plaintiffs,) Appellants,

versus

Radhanath Das and others, (Defendants,) Respondents.

CLAIM, rupees 49-8, value of fish taken from the plaintiffs' jheel, in Huryram Nuggur, on the 12th of Bysakh 1253. The defendants

deny having taken fish from Huryram Nuggur, where, they assert, there is no jheel, and state that the plaintiffs' people, on the 11th Bysakh, forcibly took fish from Mahomedpore jheel, which they hold under a pottah from the zemindar, and they were about petitioning against them when this suit was instituted. The acting moonsiff visited the spot, ruled that there was but one jheel, and, having obtained a return from the collector's office showing that no jheel, appertaining to Huryram Nuggur, was there recorded, dismissed the case. There is the usual quantity of evidence, and there are plans by both parties, and one by the acting moonsiff. The moonsiff's plan tallies with that of the plaintiffs, and shows that there is a jheel below both the villages with a narrow neck of rising ground towards the centre, which, according to the plaintiffs' plan, is cultivated and in their possession. This is supported, so far as questions were put, by the evidence taken on the spot, and the land all round from the said neck in one direction is allowed to belong to Huryram Nuggur. It therefore appears clear to me that there are two jheels, and that the plaintiffs are entitled to the value of their fish. The acting moonsiff's decision is accordingly reversed, and the appeal decreed with costs.

THE 3RD FEBRUARY 1849.
No. 119 of 1848.

Appeal from the decision of Manikchunder Shome, Additional Moonsiff of Rajarampore, &c., dated the 15*th April* 1848.

Abool, (Defendant,) Appellant,
versus
Ahmud Ali Kazee, (Plaintiff,) Respondent.

CLAIM, rupees 1-4 annas, russoom chillum, or fortieth day of mourning fee, due by the defendant, father of Kandoora deceased. The defendant urges that a charge of the kind is unusual. The moonsiff decreed the case with reference to a decision by a former judge of this zillah regarding a marriage fee, in which other charges of the kind are alluded to. No attempt is made by the plaintiff to prove that the defendant agreed to give him a fee, and I therefore reverse the moonsiff's decision, and decree the appeal with costs.

THE 5TH FEBRUARY 1849.
No. 31 of 1847.

Appeal from the decision of Radhamohun Chowdhree, Moonsiff of Rajarampore, dated the 14*th December* 1846.

Banikant Shah, (Plaintiff,) Appellant,
versus
Subrato, Wolee Mahomed, and others, (Defendants,) Respondents.

CLAIM, rupees 102-6-4, due on an ikrar for Sicca rupees 48, dated the 21st of Kartick 1241 B. S.

The defendants deny the authenticity of the document, urge that they have long been at enmity with the plaintiff, and state that Wolee Mahomed would have signed had he actually borrowed, but that there was no necessity for his doing so as his father Kola was then alive, and their busniess carried on in his name. The moonsiff dismissed the case on the following grounds. Discrepancies in the evidence of two witnesses, and the third not being produced, enmity between the parties being established, as well as Wolee Mahomed's being able to write, and their business having been carried on in his father's name, also the ikrar being payable one month after date, and this suit having been instituted nearly 12 years after. It is urged, in appeal, that the surety did not file any answer, as he knew that the claim was just. I however see no reason to interfere with the moonsiff's decision, and therefore dismiss the appeal with costs.

THE 7TH FEBRUARY 1849.
No. 95 of 1848.

Appeal from the decision of Abdool Mujeed, Moonsiff of Beergunge, dated the 10th March 1848.

Goomoo and Molung, (Defendants,) Appellants,

versus

Deena Shah, (Plaintiff,) Respondent,

CLAIM, rupees 54-5-3, due on a bond for rupees 40, dated the 17th Jyte 1251.

The defendant Molung denies being in any way concerned in the bond. The defendant Goomoo states that he recieved only 31 rupees, the odd 9 having been added for interest, also that he had previously made over to the plaintiff 12 beegahs of his jote for 1251 and 1252 at a jumma of 26 rupees, which the plaintiff detained on account of the said bond.

The plaintiff, in his reply, states that Goomoo mortgaged 12 beegahs 2 cottahs for 12 rupees lent to him, and that he (the plaintiff) paid the rent to the zemindar for two years, after which he was ousted by the defendant Goomoo.

The moonsiff decreed the case on the evidence of two witnesses to the bond, the defendants having failed to prove their assertions. The appellant Goomoo states that he made over 13 beegahs of his jote at a jumma of 26 rupees to the plaintiff for two years, and that the rent for that period was retained on account of this bond. In support of this there is the fact that he regained his land after the two years were out, and the evidence of his witnesses to the putwaree (in league with the plaintiff, after the institution of this suit) having destroyed his quittance. This case would have been more complete had the receipts for instalments of rent been produced, and the size of his jote stated, but, if he has not produced enough, the plaintiff has produced too much. The bond is in the

singular, and the name of Molung (son of Goomoo) apparently entered subsequently. The plaintiff has now filed a mortgage deed, bearing the same date as the bond, and two receipts in full for two years; rupees 13 being specified in each on account of Goomoo's jote.

These documents were not produced before the moonsiff, nor were any questions put regarding the mortgage to the witnesses, whose names are down in both documents. In this mortgage deed no period is mentioned for redemption, yet it is allowed that the defendant Goomoo obtained possession after the two years were over. The quittances are irregular and suspicious, as it is unusual to give farighs for portions of jotes not specified. It further appears to me that, if the plaintiff had advanced rupees 52, on the same day to the defendants Goomoo and his son Molung, one document would have been made to contain all the terms of the negociation. On the above grounds I reverse the moonsiff's decision, and decree the appeal with costs.

THE 7TH FEBRUARY 1849.

No. 265 of 1847.

Appeal from the decision of Rowshun Ali, Acting Moonsiff of Putneetullah, dated the 4th August 1847.

Atee Mahomed, (Defendant,) Appellant,

versus

Rajchunder Shah and others, (Plaintiffs,) Respondents.

CLAIM, rupees 299-3-5, due on a bond for rupees 200, dated the 27th Bhadoon 1243. The defendant pleads payment of rupees 231, leaving a balance of rupees 44 due by him. The acting moonsiff decreed the case, on the ground that the defendant, when sent for at the request of the plaintiffs, had not appeared in court, or given any good reason for not doing so. From the record it appears that on the 30th of July, by mutual consent, both parties were required to attend in person in two days. The case was decided on the third day, the defendant not having attended; but whether or not the plaintiffs did so does not appear. I remand the case for revision.

THE 7TH FEBRUARY 1849.

No. 220 of 1847.

Appeal from the decision of Bydnath Surma, Moonsiff of Sheebgunge, dated the 17th February 1847.

Modoo Perea, (Defendant,) Appellant,

versus

Radhamohun Shah, (Plaintiff,) Respondent.

CLAIM, rupees 297-4-4, due on a bond for rupees 248, dated the 3rd Jyte 1252 B. S.

The moonsiff decided the case *exparte*. The appellant urges enmity between him and the plaintiff, and that the case was disposed of very speedily during his absence, and also points out a discrepancy in the plaint and the ikrar on which it is founded. From the record it appears that the case was instituted on the 13th of January, and decided on the 17th of February. The return to the notice issued on the 21st of January shows that the defendant was then absent, and it appears to me clear that the plaintiff exerted himself to get the case decided before his return. The itlanamah and ishtaharnamah were issued together, only eight days being allowed, and the case was decided within 30 days of its institution, which is sharp practice. I therefore remand the case for revision.

THE 12TH FEBRUARY 1849.

No. 35 of 1847.

Appeal from the decision of Pundit Nurhurree Seeromonee, Moonsiff (and Sudder Ameen) of Malda, dated the 7th January 1847.

Sahebram Putwarree, (Defendant,) Appellant,

versus

Rekraj Geer, (Plaintiff,) Respondent.

CLAIM, rupees 126-11-9, due on a bond for rupees 125, dated the 16th Sawun 1251, given by the defendant with rupees 29-9 in cash, on account of a balance of rupees 154-9, due by him as putwarree from 1248 to 1250. The defendant denies the balance, and states that plaintiff sued him in the collector's court for rupees 300, seized him, and forced him to sign a bond for rupees 125, taking at the same time rupees 29-9 by violence. The case was remanded for the reasons detailed in the Decisions of the zillah courts for September 1846, p. 32, and the case has been again decreed. The defendant formerly filed his putwarree accounts and chullans, said to bear the plaintiff's signature, and showing a balance due to the defendant. These documents were not then contested, or even alluded to, in the plaintiff's reply, who went altogether on the bond having been given willingly. The moonsiff subsequently called for the plaintiff's account from which the balance of rupees 154-9 was made out, but his decision was grounded upon the want of proof as to violence in respect to the bond without any reference to the asserted balance.

As proof of violence could hardly be looked for under the circumstances, it appeared to me that the existence or non-existence of a balance was the point for decision. The moonsiff has now decreed the case, on the ground that the balance is proved by the plaintiff's documents, and witnesses. According to the papers filed by the defendant, the actual average jumma is about rupees 640, increasd by batta, interest, &c., to rupees 735-0, giving for the three years rupees 2,207. The payments for the three years are rupees 2,251, including

rupees 43-0, said to be due to him. The plaintiff allows that he received rupees 2,179, or, with the putwarree's allowance of rupees 66, not included in the jumma, according to the defendant's papers, rupees 2,245. The actual difference as to payments therefore is only rupees 72, accounted for by some slight differences in some of the items, such as the jumma of a jote held by the zemindar himself, nuzuranna, &c. From the jumma-wasil-bakee accounts filed by the plaintiff the actual jumma is much the same as that entered in the defendant's papers, but that is increased according to the memo., from which a balance of rupees 300 is made out against the putwarree, and the bond for rupees 125 is said to have been given to rupees 921 for 1248, and 817 and 800 for the following years. In support of this increase, accounts said to bear the defendant's signature are filed, but they are denied by him, and I do not consider them deserving of credit. The increase for 1248 from 640 to 921, by batta, interest, &c., is absurd; and the amount for 1249, by these papers, is rupees 917, while in the memo. abovementioned it is only rupees 817, which is greatly against either the said papers or the memo. being correct. According to the memo. the gross balance is made out to be rupees 300, of which rupees 145-0 are said to be payable by the ryuts, and rupees 154-9-10 by the defendant; but there is nothing in the said papers to show that such is the case.

The defendant, in his answer, stated distinctly the jumma and the amount paid by him; and if the plaintiff was then in possession of papers bearing the defendant's signature, and showing the jumma to be much greater, it is to be presumed that he would have alluded to them in his reply, instead of trusting altogether to the bond. For the above reasons I am satisfied that the bond was obtained by violence and unjustly, and I therefore reverse the moonsiff's decision, and decree the appeal with costs.

THE 13TH FEBRUARY 1849.

No. 196 of 1848.

Appeal from the decision of Manickchund Shome, Additional Moonsiff of Rajarampore, &c., dated the 11th July 1848.

Doorgapershad Tewaree, (Plaintiff,) Appellant,

versus

Mr. J. J. Gray, (in the place of Mr. J. Tayler) Manager of the Gomalty Factory, and Jugmohun Mookhtear, (Defendants,) Respondents.

CLAIM, rupees 101-14-2, vakeel's fees, with interest according to the sum specified in a wukalutnamah. The defendant (Mr. Tayler)

stated that in the case in which this plaintiff was employed by him as vakeel, the plaint was filed by another vakeel, that he was appointed by his mookhtear without his sanction, that he subsequently dismissed him having no confidence in him; that his labor consisted in having signed a supplementary plaint, and that he did not consider him entitled to any fee. The additional moonsiff decreed the case (against Mr. Tayler only) for one-fourth of the amount specified in the wukalutnamah, with reference to Act I. of 1846, not considering the plaintiff entitled to more, in consideration of the trouble he had undergone, which appeared trifling, as he had been actually dismissed, though the principal sudder ameen had not passed any final order on the mookhtear's petition, notifying that he had withdrawn from him the management of the said suit. The defendant's answer and the moonsiff's decision are lengthy in the extreme, but the point for decision is simply whether or not the plaintiff, as vakeel for the defendant in another suit, was guilty of misconduct or neglect on account of which he should be deprived of the remuneration for his professional services specified in the wukalutnamah. It appears from the record that the suit in which Mr. Tayler, through mookhtear Jugmohun, employed the plaintiff as vakeel, was decided by the principal sudder ameen in Mr. Tayler's favor, and that Jugmohun, who was present, did not object to the plaintiff's pleading, or mention his having previously filed a petition notifying his having withdrawn the management of the suit from him; and there is nothing to make it even probable that the plaintiff was then aware of any such petition having been filed. The petition, without proof of misconduct, could not deprive the vakeel of his remuneration under any circumstances, and in this instance he appears to have done all that could be looked for from him in gaining the cause for his employer. On the above grounds I amend the decision of the additional moonsiff, and decree the appeal with costs.

THE 15TH FEBRUARY 1849.

No. 84 of 1847.

Appeal from the decision of Pundit Nurhurree Seeromonee, Moonsiff (and Sudder Ameen) of Malda, dated the 19th January 1847.

Kunchiram, (Oozardar,) Appellant,

versus

Gopey Kissore Singh, (Plaintiff,) Respondent.

CLAIM, possession of one-fourth of turuf Tajpore, &c., sudder jumma rupees 38-1-5¼. The plaintiff's case was formerly dismissed by the moonsiff, and remanded for revision in Decisions of the zillah

courts, for November 1846, p. 46. The plaintiff states that his grandfather, Sheebnath Singh, in 1202, purchased one half of turuf Tajpore, in the name of plaintiff's uncle, Tarasunker; that in 1816 it was given in farm for 20 years to Goursoonder Rai, father of Chunder Mohun Rai, defendant; that on his father's death in 1218, plaintiff was a minor and Tarasunker became manager; that in 1220 Tarasunker sold his own share of the estate; that plaintiff, became of age in 1235, and in 1238 demanded a kuboolecut for his share of the estate from the farmer, who, in league with Tarasunker, produced a kuballa, asserting that he had purchased the share from Tarasunker in 1220; that in 1239 the farmer-defendant applied to have his name entered in the collector's books, when plaintiff opposed it unsuccessfully, and in 1242 sued for possession, and was nonsuited in 1244.

The defendant pleaded that his father Goursoonder, in 1216, took the estate in farm for ten years, and purchased this portion from Tarasunker in 1220, that his name was entered in the collector's book in 1239 after his father's death. In 1249 the plaintiff petitioned to stay the sale of this estate, attached as the property of the defendant under a decree in favor of Kanchiram Shah, (oozardar,) who stated that he had petitioned in the plaintiff's former case, which was nonsuited, that the plaintiff and defendant were in league; that the defendant, his father, and grandfather, Kartik Rai, who obtained the estate from Oorjon Singh had been all along in possession, though the estate was recorded in the collector's books in the name of Tarasunker.

The moonsiff decreed the case on the kuballa and evidence for the plaintiff, the defendant's oozardar having failed to produce documents or proof in support of their assertions.

That the defendant's father obtained possession of the estate as farmer in 1216, is allowed by the plaintiff, also that the defendant in 1238 asserted that his father had purchased the estate in 1220 from Tarasunker, but the purchase has not been proved, and the plaintiff, who was a minor until 1235, resisted the entry of the defendant's name as proprietor in 1239, and was referred by the collector to a regular suit, which he instituted in 1249. The defendant and his father having been in possession from 1216, is therefore no bar to the plaintiff's claim. The other principal objection, urged by the oozardar, that the defendant's grandfather, Kartik Rai, obtained this portion from Oorjon Singh, the original proprietor of the whole turuf, is disproved by the deed of sale by Oorjon Singh to Tarasunker in 1220; by a collectory perwunnah of 1204, directing an ameen to divide the turuf between them; by Tarasunker's name, as proprietor, having remained in the collector's books until 1239; and by the sale by Tarasunker of one-fourth of the turuf (his own share) to Kassinath Rai, which is allowed by all parties. On the above grounds I dismiss the appeal with costs.

THE 27TH FEBRUARY 1849.

No. 102 of 1848.

Appeal from the decision of Moulvee Soojat Ally, Officiating Moonsiff of Rajarampore, dated the 30th March 1848.

Nemoollah, (Defendant,) Appellant,

versus

Mosheit, (Plaintiff,) Respondent.

CLAIM, rupees 24-1, due on a bond for rupees 22, dated the 13th Assar 1251. The defendant pleads payment in full, namely, rupees 14 to the lender, Sadekoollah, deceased, and 17 rupees to his widow, who gave an acquittance, dated the 7th Chyte 1253. The officiating moonsiff decreed the case, on the evidence for the plaintiff to his having received the said bond as part of his share of the property of his uncle Sadekoollah, and the defendant's having made over to him a bullock, valued at rupees 5, in part payment. The officiating moonsiff overruled the evidence for the defendant in respect to the payment of rupees 14 to the deceased, as it was not entered on the bond and the witnesses were at variance, and considered the widow's petition stating that the bond was hers, and had been liquidated by the defendant, as liable to suspicion, because the amount, said to have been paid, was greater than that due up to the date of the acquittance.

The principal point for decision in this case is whether or not the plaintiff obtained the bond as part of his share of his uncle's property. The plaintiff states that his uncle on his deathbed, and in the presence of sundry neighbours, made the distribution while his witnesses state that it was made by his uncle's widow. The uncle, it appears, left a daughter, yet according to the plaintiff and his witnesses the bulk of the property went to the nephew, which is highly improbable. The plaintiff states that the defendant made over a bullock, at 5 rupees, in part payment of the bond, while his witnesses state that the beast was valued at 4 or 5 rupees, one adding that the defendant promised to pay the balance due on the bond afterwards, and the other that he offered to give an instalment bond for it. The defendant and his witnesses state that the bullock was sold for ready money without reference to any bond, which appears probable enough. I can discover no discrepancies of importance in the evidence to the payment of rupees 17 to the widow, and it is supported by a document on stampt paper in which the previous payment of rupees 14 to the deceased is mentioned. The amount being a little in excess of the principal with legal interest up to date is, in my opinion, all in favor of the document being genuine. On the above grounds, I reverse the officiating moonsiff's decision, and decree the appeal with costs.

THE 27TH FEBRUARY 1849.
No. 108 of 1848.

Appeal from the decision of Moulvee Soojat Ally, Officiating Moonsiff of Rajarampore, dated the 17*th April* 1848.

Genta, (Defendant,) Appellant,
versus
Belsa, (Plaintiff,) Respondent.

CLAIM, rupees 823-5, value of dhān, deposited in defendant's gola, on the 17th Phalgoon 1253. The defendant denies the deposit, and states that the plaintiff had his own share of the dhān produce on the defendant's land, which he cultivated, but refused to pay rent for his house, which is also in defendant's jote. The officiating moonsiff decreed the case on the evidence of two witnesses for the plaintiff, overruling that of three witnesses for the defendant. The plaintiff states that he deposited the dhān in the gola of the defendant's father in Phalgoon, and that the defendant, after his father's death, refused to give it up, while his witnesses state that the deposit was made in Poos, and that the defendant's father died in Maugh, which precedes Phalgoon. On the other hand, the evidence for the defendant is clear and distinct as to the plaintiff having had his share of the produce of the land which he cultivated. There is no document to support the deposit, which is improbable, without one after the parties had taken their respective shares. On the above grounds, I reverse the decision of the officiating moonsiff, and decree the appeal with costs.

THE 27TH FEBRUARY 1849.
No. 118 of 1848.

Appeal from the decision of Moulvee Soojat Ally, Officiating Moonsiff of Rajarampore, dated the 22nd April 1848.

Chintamoney, (Defendant,) Appellant,
versus
Ramkoomar, (Plaintiff,) Respondent.

CLAIM, rupees 29-6-6, due on an ikrār for rupees 18-8, dated the 3rd of Assin 1249 B. S. The defendant denies the authenticity of the document. The officiating moonsiff decreed the case on the evidence for the plaintiff, the defendant having failed to prove her assertions. The plaintiff is a bawd and the defendant a prostitute. The terms of the ikrar are that the defendant is to live at the expense of the plaintiff and in her house, the profits of her prostitution going to the plaintiff, and that, in the event of the defendant leaving the plaintiff's house without permission, she is to pay back rupees 18-8 lent to her by the plaintiff, with interest. The claim is founded on an alleged property in the person and services of another as a prostitute and cannot be countenanced. I therefore reverse the officiating moonsiff's decision, and decree the appeal with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, ESQ., JUDGE.

THE 7TH FEBRUARY 1849.

Case No 15 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 29th day of September 1847.

Rajkissore Mookerjee, (Plaintiff,) Appellant,

versus

Oditchurn Mullick, deceased, Buddonmonee Dossee, Chandmonee Dossee, Soorujmonee Dossee, Taramonee Dossee, daughters and heiresses of Oditchurn Mullick, deceased, Bhanomonee Dossee, Luckeemonee Dossee, Horeechurn Dhur, Hurchunder Mookerjee, Ramchand Paul, Kisto Paramanick, Ramdhone Mundul, Deenobundoo Ghose, Seebchunder Ghose, Ramcoomar Ghose, Ramlochun Puttur, Adormonee Dossee, Rasmonee Dossee, and Shamasoonderee Dossee, (Defendants,) Respondents.

CLAIM, for the possession of certain purchased property, with damages, laid at Company's rupees four hundred and eighty-five, annas six, (Company's rupees 485-6.)

The plaint sets forth that, on the 4th day of the month of Srabun 1251 B. S., the plaintiff purchased six beegahs and eleven cottahs of rent-paying land, situated in the village called Maklah, from one Bhojohurree Mannah, the late husband of the defendant Shamasoonderee Dossee, for the sum of rupees twenty-one, and held possession of the same; that on the 28th day of the month Bhadoon of the said year 1251 B. S., the defendants Ramcoomar Ghose and others dispossessed him (the plaintiff) of the said land, thereby causing considerable loss to him (the plaintiff) of the produce of paddy, &c.; therefore he (the plaintiff) instituted this suit.

The defendant Shamasoonderee Dossee, in her answer, declares that her late husband did not ever sell any rent-paying land to the plaintiff; that while she was staying with her father, she received the intelligence of the death of her late husband, which death occurred on the 11th day of the month Srabun 1251 B. S.; in consequence she returned home; she then learned that her husband had died at the house of his concubine, by name Khemah Raur, to which house she (Shamasoonderee Dossee) instantly repaired and demanded the property left by her late husband. Khemah Raur delivered to her part of it, but not the box which contained papers, documents, &c., such as pottahs, leases, &c.; that Khemah Raur, having leagued with the plaintiff, caused her, the defendant Shamasoonderee Dossee,

to be dispossessed of the disputed land, which land had been acquired by her husband, causing her to suffer much loss of produce of paddy &c.; she (the defendant) had, therefore, filed a suit against the parties who had dispossessed her, No. 79 in the court of the sudder ameen; in that suit the fraudulent intentions of the plaintiff will appear.

The defendant Ramcoomar Ghose, in his answer, declares that the plaintiff had purchased the land in dispute, and the talookdars, with a view to prevent a mutation of names in their sherishtah, had leased the land in dispute to the defendants Ramcoomar Ghose and Deenobundoo Ghose, on the 7th day of the month Srabun 1251 B. S., at an annual rent of rupees twenty-six, annas three, gundahs four, (rupees 26-3-4,) who accordingly continue to pay the rent, and are still in possession.

The sudder ameen (Pundit Sreeram Turkolunkar,) having perused the records of both cases, that is to say, Nos. 13 and 79, considering that the bill of sale filed in this case was not a genuine instrument, dismissed the case, on the grounds set forth in his decision.

I see no sound reason on which to disturb the decision of the sudder ameen, passed on the 29th day of September 1847, and therefore dismiss this case. Costs to be paid by each party respectively, as the respondent appeared unsummoned.

THE 7TH FEBRUARY 1849.

Case No. 28 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 17th day of August 1848.

Kummulchand Roy, Madhobchand Roy, and Prosunnochand Roy, (Plaintiffs,) Appellants,

versus

Roopmonee Dossee, Poornochunder Roy, Modoosooden Nundee, and Obhoychurn Nundee, (Defendants,) Respondents.

THE papers in this case shew that, on the 16th day of January 1849, the appellants filed a "razeenamah," and the respondents, Poornochunder Roy, Modoosoodun Nundee, and Obhoychurn Nundee, filed also two separate "saffeenamahs," declaring that they (the two several parties) had amicably settled their differences out of court, and that they had not either of them, that is to say, the appellants and respondents, any demand the one party against the other, and soliciting that, with the exception of the value of the stamp upon the petition of appeal, the other portions of the costs may be paid by each party respectively.

With reference to the documents, that is to say, to the "razeenamah" and the "saffeenamahs" filed by the parties, I dismiss this appeal. The costs to be paid by each party respectively.

The value of the stamp on the petition of appeal to be refunded to the appellant.

THE 12TH FEBRUARY 1849.

Case No 20 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 7th day of July 1847.

Ramkannye Banerjee, (Plaintiff,) Appellant,

versus

Prawnkisto Roy, Shamasoonderee Debea, and Sonamonee Debea, (Defendants,) Respondents.

CLAIM for the balance of a sum of money advanced on loan on a "hauthchitta," or memorandum, laid at Company's rupees one thousand, two hundred and six, ten annas, and fifteen gundahs, (Company's rupees 1,206-10-15,) including interest.

The papers of this case shew that both of the parties in this case having been dissatisfied with the decision of the principal sudder ameen, the plaintiff preferred this appeal, while the defendant (Prawnkisto Roy) also appealed against the decision aforesaid, under No. 19; that on the 7th day of July 1848, both the appeals were brought forward, when in the case No. 19, I reversed the decision of the principal sudder ameen, and remanded the case for re-trial; and as this case was identical with No. 19, it did not appear to me necessary to pass any further order on this appeal; it was therefore ordered to be struck off the file.

The appellant having carried a special appeal to the Court of Sudder Dewanny Adawlut, that Court, on the 23rd day of December 1848, A. D., sent back this case for re-trial.

The appellant states in his "woojuhaut," grounds for appeal, that his suit was for rupees three thousand, four hundred and sixty, annas twelve, gundahs sixteen, but the principal sudder ameen, having unjustly decreed the case to the extent of rupees two thousand, two hundred and fifty-four, annas two, gundahs one, instead of the whole, he consequently preferred this appeal.

The original nuthee of this case having been remanded for re-trial to the principal sudder ameen, on the appeal of Prawnkisto Roy, it is proper that this case should also be sent back for re-trial, that the objections urged by the appellant might be investigated. I decree this appeal, and reverse the decision of the principal sudder ameen, and direct that a copy of the order be sent to the principal sudder ameen, with instructions to decide this case, together with that of Prawnkisto Roy, already remanded for re-trial, after the objections offered by the appellant have been enquired into. Costs of the suit to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 28TH FEBRUARY 1849.

Case No. 146 of 1847.

Appeal from the decision of Baboo Jugbundoo Banerjee, Moonsiff of Byedbattee, dated the 12th day of June 1847.

Kowsullea Dossee, (Plaintiff,) Appellant,

versus

Rumanauth Gossein, Prawnkisto Gossein, Gourmohun Gossein, Takoordoss Dutt, Keenoo Pyke, Toolseeram Sirdar, and Oleekabar Nugdee, (Defendants,) Respondents.

SUIT to obtain a receipt for rent already paid, laid at Company's rupees fifty-four, annas three, gundahs six, cowrees three, (Company's rupees 54-3-6-3.)

The plaint sets forth that Ramsoonder Mundle, the late husband of the plaintiff, formerly held in farm a certain portion of land situated in the village called Beeghatta, at an annual rent of rupees eighteen, annas fourteen, gundahs thirteen, cowrees two; that from the amount of rent paid, from the year 1246 to the year 1252 B. S., the plaintiff has received a receipt for the sum of seventy-eight rupees, eight annas and ten gundahs only; and, in consequence of the talookdars having failed to give a receipt for the balance, that is to say, for the sum of rupees fifty-four, annas three, gundahs six, cowrees three, (rupees 54-3-6-3,) the plaintiff instituted this suit.

The defendant Gourmohun Gossein, in his answer, denies the fact as stated in the declaration of the plaintiff, and adds that the late husband of the plaintiff had, by a deed of gift, made over all his property to his eldest son-in-law, one Hurchunder Paul, on whose death his son, that is to say, the son of Hurchunder Paul, by name Sreeram Paul, being unable to pay the rent of the land in dispute, and the arrears accruing, he (the said Sreeram Paul) relinquished the land aforesaid, when the defendant re-let the land in question to other ryuts.

The moonsiff dismissed the case on the grounds set forth in his decision.

From the "lawazeemah," village papers, filed by the talookdar for the year 1251 B. S., it appears that the defendants had received from the plaintiff thirteen rupees. I therefore decreed the appeal to the extent of thirteen rupees, out of the amount claimed by the plaintiff, and reversed the decision of the moonsiff.

The defendant (Gourmohun Gossein) having preferred a special appeal to the Court of Sudder Dewanny Adawlut, that Court reversed the decision of the judge, and remanded the case for re-trial on the following grounds:—"The suit is for a receipt for rent paid during successive years from 1246 to 1252 B. S.; and a question arises whether it is not barred under Section 7, Regulation II. of 1805, with reference to the precedent at page 26, volume VI. of the Reports of the Court of Sudder Dewanny Adawlut. The suit was instituted in

Chyte 1252 B. S., and the judge has apparently founded his decision on payments made in 1251 B. S. The dates of these payments, however, are not given in the decree of the judge, and, in the absence of these particulars, it is impossible to say whether his decision is a correct one, or the contrary. The judge should also state in his decree whether the whole amount of the rent for 1251 B. S. was paid, as this may form an element in the determination of the question of limitation."

In obedience to the orders of the Superior Court, the case was restored to its original number on the file, and on a careful perusal of the whole of the papers of the nuthee of the original and appeal cases, it appears that the plaintiff claims receipts for rents paid by her to the defendants from 1246 to the year 1252 B. S. It becomes necessary to enquire whether, with reference to the provisions of Section 7, Regulation II. of 1805, and the precedent of the Court of Sudder Dewanny Adawlut, No. 306, at page 26, volume VI., dated the 14th day of April 1835, the suit has been instituted within one year.

It appears that the suit was instituted on the 4th day of Chyte 1252 B. S., hence the plaintiff's claim to obtain receipts for rent paid from the year 1246 to 1250 B. S., is inadmissible. Of the remaining two years, that is to say, for the years 1251 and 1252 B. S., it appears that the plaintiff states in her plaint that, on the 17th day of Poos 1251 B. S., she had paid to the defendants, by the sale of fish, the sum of three rupees, two annas, through one Chunder Mundle; that on the 26th day of that month, that is to say, the month of Poos, she paid the sum of one rupee and eight annas by sale of jagree, and on the 15th day of Chyte 1251 B. S., she paid a further sum of rupees twelve and eight annas by sale of jagree; that, on the 14th day of Assar 1252 B. S., she also paid by the sale of jagree the sum of rupees twelve, as well as two rupees and eight annas, on the 28th day of Aughun 1252 B. S. by sale of jagree; hence the suit had been instituted within one year, if it is calculated from the 15th day of Chyte 1251 B. S.

The moonsiff, considering the evidence of the witnesses for the plaintiff unworthy of credit, because they were the relatives of the plaintiff, and with reference to the precedent No. 306, deeming the claim of the plaintiff to obtain receipts for rent paid for past years, inadmissible, dismissed the case.

From the "lawazeemah" papers filed by the talookdar from the year 1247 to the year 1252 B. S., particularly those for the year 1251 B. S., and the "seeah" papers for the year aforesaid, that is to say, the year 1251 B. S., it appears that the defendant received from the plaintiff the sum of rupees thirteen, and considering that the precedent of the Court of Sudder Dewanny, No. 306, was in contravention to the precedent No. 501, dated the 30th day of September 1847, in the case of Ramtaruck Nundee, I therefore did

decree the case to the extent of thirteen rupees only, and a fine to the extent of double that amount according to law.

With reference to the orders of the Superior Court, regarding the dates on which the several items were paid, it appears from the "seeah" papers filed by the talookdar that, on the 15th day of Poos 1251 B. S., a sum of three rupees is entered under No. 395, for the sale of fish, that on the 18th day of Bysakh 1252 B. S. the sum of ten rupees is entered, No. 677, for the sale of jagree, making a total of thirteen rupees as realized from the plaintiff. Under these circumstances I am of opinion that the item of three rupees paid on the 15th day of Poos 1251, cannot be allowed to the plaintiff, because the period of one year had expired previous to the institution of her suit, but I do consider her entitled to receipt for the last mentioned sum, that is to say, the sum of ten rupees paid on the 18th day of Bysakh 1252 B. S., there being no other evidence to prove that the plaintiff had paid any further sum on account of rent for the year 1251 B. S. Hence I decree the appeal, and reverse the decision of the moonsiff, passed on the 12th day of June 1847, and order that the plaintiff receive a receipt for the sum of ten rupees only, and that the talookdar, Gourmohun Sein, and his naib, Takoordoss Dutt, for not having given a receipt, for that sum, that is to say, for ten rupees, should pay the sum of double that amount, that is to say, to pay twenty rupees as a fine to the plaintiff, with costs of suit in all courts, in proportion to the amount thus decreed, including interest.

THE 28TH FEBRUARY 1849.

Case No. 26 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 15th day of September 1847.

Mudoosoodun Chuckerbuttee and Pertaubchunder Chuckerbuttee, (Defendants,) Appellants,

versus

Anundloll Roy, Permanund Roy, and Horishanund Roy, (Plaintiffs,) Respondents.

CLAIM for the possession of three cottahs of lakhiraj, or rent-free, land, with the houses erected for the purpose of the worship of idols and a temple called "Naut Mondeer" and "Dole Munchub," also for damages by the loss of the ornaments, &c., laid at Company's rupees one thousand, two hundred and thirty seven, annas ten, (Company's rupees 1,237-10.)

The plaint sets forth that the plaintiffs possessed three cottahs of ancestral lakhiraj, or rent-free, land, on which they had at first erected a thatched, and subsequently a brick built house, a temple, or pagoda called "Naut Mondeer" and a "Dole Munchub," for the

performance of the "Gunnesh Jonnonee poojah;" that having performed the prethista, or the ceremony of consecrating the temple, they continued for a long time to conduct the worship of the idol; that the defendants were the pooroheet, or priests, but the defendants having violated the sanctity of their office, the plaintiffs dismissed them; that in the month of Poos 1250 B. S., the defendants having prevented the worship, and having seized on the articles, and appropriated the same to their own use, that is to say, to the use of the defendants, the plaintiffs instituted this suit as laid above.

The defendants, in their answer, state that, the land in dispute is their own property, that is to say, that the lakhiraj, or rent-free, land in dispute is the property of the defendants; that the buildings thereupon were erected by contribution of the "Baro Yaree poojah;" that the plaintiffs only superintended the work; and that the poojah was performed by the Baro Yaree; that the land on which the Dole Munchub was built, is held on a lease taken by the plaintiff Purmanund Roy from the defendants; that owing to the contribution money having been deposited with the plaintiffs, they squabbled with the defendants, and the plaintiffs then dismissed the defendants from the office of pooroheet, and that the plaintiffs have instituted this suit from pique and animosity, &c.

The late principal sudder ameen (Baboo Roy Radha Govind Shome) dismissed the case on the 21st day of May 1845. On an appeal by the plaintiffs, it was remanded for re-trial by the judge, to James Reily, Esquire, the present principal sudder ameen, on the 21st day of November 1846, on the grounds that the ameen, who had been deputed to make the local investigation and enquiry had not been duly sworn, according to the provisions of Section 17, Regulation IV. of 1793.

The principal sudder ameen, James Reily, Esquire, having supplied the omission noticed in the decree of the judge, dated the 21st day of November 1846, decreed the case on the grounds set forth in his decision.

On the 23rd day of May 1848, the judge sent back the case for re-trial to the principal sudder ameen, to be disposed of in accordance with the provisions of Act XXIX. of 1841, in consequence of the plaintiffs having omitted to proceed with their case for a period exceeding six weeks, in the court of the principal sudder ameen, for which delay the plaintiffs had not assigned any reason.

The respondents, being dissatisfied with the abovenamed orders of the judge, carried a summary appeal to the Court of Sudder Dewanny Adawlut, which Court, on the 18th day of July 1848, reversed the orders of the judge, and remanded the case for re-trial, on the grounds that, as the neglect had not been noticed in the court of first instance, under the provisions of Act XVII. of 1847 the appellate court had not any right to notice it.

In accordance with the orders of the Court of Sudder Dewanny Adawlut, the case was restored to its original number on the file of the judge.

On a careful perusal of the whole of the papers in this case, it does not appear in the investigation instituted by the principal sudder ameen in this case, that any enquiry was made respecting the three cottahs of land in dispute, which each of the parties claim severally as their ancestral lakhiraj (rent-free) land, nor was any documentary evidence called for by the principal sudder ameen to prove that identical and important fact, which, if ascertained, would lead to the easy decision of the fact by whom the buildings had been erected on the land in dispute. Hence I consider the decision incomplete, and therefore I decree this appeal, and reverse the decision of the principal sudder ameen, passed on the 15th day of September 1847, and remand the case for re-trial to the aforesaid principal sudder ameen, with instructions to restore the case to its original number on his file, and then to re-try the case, attending to the observations noticed in this decree. The costs for the present to be paid by each party respectively and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 28TH FEBRUARY 1849.

Case No. 13 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 15*th day of March* 1848.

Rammohun Banerjee, (Defendant,) Appellant,

versus

Radhanauth Pandah, plaintiff, Mudoosoodun Roy, and Seeboo Dossee, widow of the late Hurreenarayn Chowdree, deceased, (Defendants,) Respondents.

SUIT for the reversal of a sale effected under Regulation VIII. of 1819, laid at Company's rupees one thousand, five hundred, and eighty-five, (Company's rupees 1,585.)

The papers in this case shew that the late Lollmohun Banerjee, the father of the defendant (Rammohun Banerjee) purchased from the former zumeendar, by name Goyamonee, a ten annas share of mouzah Moorghaberrea and other villages adjoining to lot Kooliudah, situated within the civil jurisdiction of this district (Hooghly) and remained in the possession of them: that Komlakaunt Mittre and others sold their five annas share of putnee talook, mouzah Moorghaberrea, to the plaintiff, Radhanauth Pandah, who continued in possession, and who sent the rent due up to the month of Assin 1250 B. S., to the zumeendar, Lollmohun Banerjee, who declined to

receive the same, and then (contrary to law) instituted a suit under Regulation VIII. 1819, in the collectorate of Burdwan, and had the property sold, which he (the said Lollmohun Banerjee) fictitiously purchased in the name of Hurreenarayn Chowdree, and then dispossessed the plaintiff; that on this occurrence the plaintiff (Radhanauth Pandah) instituted a civil suit under No. 17, in the court of the principal sudder ameen, for the reversal of the abovementioned sale, and obtained a decree, in execution of which he (the plaintiff) was put in possession; that the said Rammohun Banerjee appealed the case under No. 38, when the decision of the principal sudder ameen was upheld by the judge: that the said zumeendar, Rammohun Banerjee, again illegally filed a suit under Regulation VIII. of 1819, for the rent for the last six months of the year 1252 B. S., which rent amounted to rupees one hundred and ninety-eight, annas fourteen, in contravention of the aforesaid decision in the Burdwan collectorate, when the plaintiff presented a petition to the collector of Burdwan together with a copy of the decision of the civil court, and prayed that the sale might be postponed. The collector of Burdwan rejected the petition and had the muhaul sold on the 23rd day of May 1846, when the said Rammohun Banerjee again purchased the property for rupees two hundred and five, in the name of the defendant (Mudoosoodun Roy,) and dispossessed the plaintiff, who in consequence instituted this suit.

The defendant (Rammohun Banerjee) in his answer, declares that the plaintiff instituted this suit against Lollmohun, who, the plaintiff well knew, was not alive, having previously died, and that he (the said plaintiff) rectified the said plaint (by a supplementary plaint,) naming him (Rammohun Banerjee) as the defendant in this case, which case ought therefore to be nonsuited.

Secondly. That the property in dispute having been sold for arrears of rent, due for the last six months of the year 1252 B. S., the defendant Mudoosoodun Roy purchased it for the sum of rupees two hundred and five: the plaintiff ought to have estimated the value of the suit, either on the amount of the sale proceeds or on the value of the produce of the property in dispute in a lower court: he not having done so, the suit cannot be entertained in this court.

Thirdly. For the plaintiff to consider the decision passed in No. 38, final, is not just, because the defendant (Rammohun Banerjee) has preferred a special appeal to the Court of Sudder Dewanny Adawlut, and which special appeal has not as yet been disposed of.

Fourthly. That it is clearly stated in Section 16, Regulation VII. of 1832, that the sale of putnee talooks shall be made by the collector, to whom the rent of the zumeendaree is paid; and as the rent of the talook in dispute is paid into the court of the collector of Burdwan, he (the defendant) according to custom instituted his suit

under Regulation VIII. of 1819, in the court of the collector of Burdwan, of which the plaintiff was aware, and that, if the plaintiff had a right to the talook in question, he would have deposited the amount of rent in the treasury of the collector.

The defendant Mudoosoodun Roy gives the same answer as the foregoing defendant, and declares that he purchased the talook aforesaid for himself.

The principal sudder ameen, James Reily, Esquire, with reference to the decision passed by the judge, on the 19th day of August 1846, and for other reasons set forth in his decision, decreed the case, and annulled the sale which had been ordered by the collector of Burdwan, and that the plaintiff be placed in possession of the five annas share in mouzah Moorghaberrea, and the plaintiff to receive wasilaut from the date of the institution of the suit to the date of possession, and all costs to be paid by Rammohun Banerjee.

I do not see any reason on which to disturb the decision of the principal sudder ameen, James Reily, Esquire, passed on the 15th day of March 1848, I therefore dismiss this appeal with costs.

THE 28TH FEBRUARY 1849.

Case No. 3 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 28th day of December 1847.

Tarruckchunder Chatterjee, (Defendant,) Appellant,

versus

Ramkisto Sircar, (Plaintiff,) Bulram Sircar and Nobocoomar Chatterjee, (Defendants,) and Gungasaugur Sircar, (Claimant,) Respondents.

SUIT to obtain possession of thirteen and three quarter cottahs of land by claiming a right to its rent, at the rate of Sicca rupees six, annas six, gundahs ten, (Sicca rupees 6-6-10,) calculated at Company's rupees one hundred and twenty-two, annas fifteen, gundahs six, cowrees two, (Company's rupees 122-15-6-2.)

The papers in this case shew that the land in dispute is claimed by the plaintiff as land subject to the payment of revenue, whereas the defendants declare it to be exempt from rent.

This case was, under the provisions of Regulation II. of 1819, sent to the collector for report, who, that is to say, the collector, has declared that the land is rent-paying.

The principal sudder ameen, James Reily, Esquire, decreed the case thus, "that defendants pay at the rate of rupees six, annas six, gundahs ten, (rupees 6-6-10,) annually, for the land in question: costs to be paid by the defendants."

The appellant urges in his appeal that the principal sudder ameen has decided this case in contravention of Construction No. 576, &c.

Construction No. 576 declares: " In case of a zumeendar suing to resume lands held in a rent-free tenure, the only question for the court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree in the event of the suit being decided in the favor of the plaintiff, should merely declare the land liable to assessment." This the principal sudder ameen has omitted to do in this case, and therefore I decree this appeal, and reverse the decision of the principal sudder ameen passed on the 28th day of December 1847, and direct that the case be remanded to the said principal sudder ameen for re-trial, with instructions to restore the case to its original number on his file, and re-try the case with reference to the above quoted Construction. Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 28TH FEBRUARY 1849.

Case No. 16 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 10*th day of March* 1848.

Bhoyrub Chunder Koowur, Hurrish Chunder Koowur, Roop Chunder Koowur, and Seeboosoonderee Dossee, widow of the late Mohesh Chunder Koowur, (Plaintiffs,) Appellants,

versus

Gopaul Chunder Chowdree, son of the late Parbutteechurn Chowdree, deceased, and Takooranee Dossee Debea, mother of Nobinchunder Chowdree, a minor, (Defendants,) Respondents.

CLAIM for the sum of rupees one thousand and sixty-six, annas ten, gundahs eight, being the amount of a sum of money advanced on loan on a bond, including interest.

The plaint sets forth that the defendants borrowed the sum of Sicca rupees one thousand from the plaintiff, on a bond dated the thirtieth day of Joystee 1242 B. S., engaging to pay the sum of five hundred Sicca rupees in 1242 B. S., and five hundred Sicca rupees in 1243 B. S., of which sum the defendants repaid the item of five hundred rupees, but failing to pay the balance, the plaintiffs instituted this suit, that is to say, for the balance aforesaid of five hundred Sicca rupees, or Company's rupees five hundred and thirty-three, annas five, gundahs four, principal money, and the sum of Company's rupees five hundred and thirty-three, annas five, gundahs four, on account of the interest.

The defendant Gopaul Chunder Chowdree, in his answer, denies the debt; and states that his father, Parbutteechurn Chowdree, had taken a certain sum of money on loan from the father of the plaintiff, in the month of Assin 1241 B. S., and to enable him to liquidate the debt, he (Parbutteechurn Chowdree aforesaid) gave in farm, in the year 1242 B. S., his putnee talook mouzah Hathânee to the late Mohes Chunder Koowur, the brother of the plaintiff, for a period of five years, directing the rent to be paid to the father of the plaintiffs in liquidation of the debt; that the plaintiffs held possession of the talook until the end of the year 1242 B. S., and realized the whole of the rent due for that year, from the ryuts, together with the rent due to the father of the defendants, which sum altogether liquidated the debt: now the plaintiffs, without any adjustment of accounts, have fraudulently instituted this suit.

The points taken into consideration by the principal sudder ameen, in this case, were; first, the genuineness of the bond; and secondly, whether the debt had been liquidated from the assets of the farm. The principal sudder ameen considered the first point proved: and as the plaintiff had not established on what date the estate in question had been sold (in 1843,) he (the said principal sudder ameen) drew the conclusion that the assets of the estate had liquidated the debt, and therefore he dismissed the case.

The appellants urge in their appeal that, if the estate was sold in the commencement of the year 1243 B. S., how could the amount agreed to be paid by the defendant in that year, that is to say, 1243 B. S., have been previously settled?

I am of opinion that the appellant should be called upon to prove the date on which the estate had been sold. Hence the case should be sent back for re-trial, and therefore I decree the appeal, and reverse the decision of the principal sudder ameen, passed on the 10th day of March 1848, and direct that the case be remanded to the said principal sudder ameen, with instructions to restore it to its original number on his file, and, with reference to the foregoing remarks in this decree, to re-try the suit. The costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded ed to the appellant.

THE 28TH FEBRUARY 1849.

Case No. 11 of 1843.

Received for re-trial in October 1848.

Appeal from the decision of Roy Radha Govind Shome, Late Principal Sudder Ameen of Hooghly, dated the 7th day of March 1843.

Mr. John Watson, (Defendant,) Appellant,

versus

Joykissen Mookerjee and Rajkissen Mookerjee, Zumeendars of a twelve annas sixteen gundahs share in lot Reedoyrampore, (Plaintiffs,) and Prawnnauth Chowdree, Zumeendar of a three annas four gundahs share of lot Reedoyrampore, (Defendant,) Respondents.

CLAIM for the removal of an embankment (bund) and to recover damage sustained thereby, laid at Company's rupees one thousand, one hundred and eighty-eight, annas twelve, gundahs sixteen, (Company's rupees 1,188-12-16.)

The plaint sets forth that, within the zumeendaree of the plaintiff by name lot Reedoyrampore, Mr. John Watson erected a new bund (embankment) on the east of a river, called Seelabutty *alias* Seelaye, appertaining to mouzah Hijlee, which bund is very injurious to the general cultivation of their zumeendaree, in consequence of which they have instituted this suit as laid above.

The defendant Mr. John Watson, in his answer, urges that the embankment (bund) in dispute is an old established one; that no damage has occurred to the cultivation of the plaintiffs from the erection of the said embankment (bund,) that on the contrary the lands and the crops have been improved; that the fact of the embankment (bund) in question being an old established one, will be proved by the copy of a roobakaree by the magistrate, dated the 2nd day of April 1828.

The late principal sudder ameen, Roy Radha Govind Shome, decreed the case for the reasons set forth in his decision.

Mr. John Watson, being dissatisfied with the above decision, appealed the case.

The additional judge (Mr. C. T. Davidson) threw the case out under the statute of limitations.

The plaintiffs then carried a special appeal to the Court of Sudder Dewanny Adawlut, which Court record their opinion as follows: "That the law of limitations does not apply to this case. The plaintiffs sued for damage sustained from the commencement of 1246 to Maugh 1247 B. S., in consequence of the erection of a certain embankment, and the suit was filed on the 9th day of February 1841, corresponding with the 28th day of Maugh 1247 B. S., so that the question of limitation does not arise. But a question of prescription may arise as to the length of time the embankment has been in existence, and this point demands enquiry and investiga-

tion," and, annulling the decision of the late additional judge, the Court remanded the case in order that the appeal may be disposed of on its merits.

On an attentive perusal of the whole of the papers in this case, it appears that the late principal sudder ameen ordered the plaintiffs to be put in possession of an embankment (bund) called Kudumtolah, whereas the bund (embankment) in dispute is named Hijlee bund, which bund is not claimed by the plaintiffs: hence with reference to the orders of the Court of Sudder Dewanny Adawlut, under date the 8th day of July 1848, I consider that the case should be sent back for re-trial, to enquire as to the length of time their embankment was in existence. Therefore I decree this appeal, and reverse the decision of the late principal sudder ameen, (Roy Radha Govind Shome,) passed on the 7th day of March 1843, and order that the case be remanded to the present principal sudder ameen, (James Reily, Esquire,) with instructions to restore the case to its original number on his file, and to re-try it, in accordance with the remarks made in this decree and the orders of the Court of Sudder Dewanny Adawlut. Costs of suit to be paid by each party, respectively, for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 28TH FEBRUARY 1849.

Case No. 5 of 1849.

Appeal from the decision of Pundit Sreeram Turkolunkar, Head Moonsiff of Hooghly, dated the 25th day of November 1848.

Needheeram Dharah, (Defendant,) Appellant,

versus

Anundmoyee Dossee, (Plaintiff,) Respondent.

CLAIM, for maintenance, calculated at Company's rupees thirty-two, (Company's rupees 32.)

The appellant preferred this appeal on the 10th day of January 1849, stating that he would subsequently file his grounds for appeal, which he has failed to do, for a period of more than six weeks: hence, under the provisions of Act XXIX. of 1841, I dismiss this appeal with costs.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, ESQ., JUDGE.

THE 7TH FEBRUARY 1849.

Case No. 48 of 1849.

Regular Appeal from the decision of Puddolochun Sein, Moonsiff of Dhurmpore, dated the 16th February 1846.

Buddun Chunder Sein and two others, (Defendants,) Appellants,

versus

Golam Durbesh Joardar, (Plaintiff,) Respondent.

THIS suit was originally instituted before the moonsiff of Dhurmpore by the plaintiff, to fix the rent of certain lands held by the defendants in the putnee talook of the plaintiff, in mouzah kismut Burtail.

In the plaint the land is estimated at 214 beegahs, and the jumma at rupees 295-5, but the defendants state that part of the land is lakhiraj, and produced certain documents in support of their statement, which were considered valid by the moonsiff, and a deduction accordingly was allowed. On the case being appealed to a higher court, the principal sudder ameen refused to admit the validity of the documents, with reference to the lakhiraj land admitted in the lower court, and in his decree mentioned that the plea of the defendants was groundless and incomplete, as the lands which they said were rent-free lands did not appear to be inserted in the lakhiraj registers of 1202 and 1209, and that, without it could be proved that they were included in such registers, they could not be admitted as lakhiraj. Subsequent to the passing of this order, the defendants appeared before the principal sudder ameen, and applied for a review of judgment, on the ground that they had discovered that the lands in question were included in the said registers. This review of judgment was sanctioned, and the principal sudder ameen allowed a certain portion of the lands to be rent-free. But previous to the production of the proof that the lands were rent-free, the defendants had come to an arrangement and settlement of the plaintiff's claim on them, and had agreed to pay a certain portion of the decree awarded by the court, which had disallowed the plea of the lands being lakhiraj, and this agreement has been decreed and enforced against them, and therefore they now appeal against the order, and point out

how unfair it would be to realise from them the full amount of revenue for all the lands, part of which have been proved and allowed to be lakhiraj. I therefore remand the case back to the moonsiff's court, with instructions that the claim of plaintiff be re-investigated, with reference to the deduction to be allowed for the lands which the principal sudder ameen has admitted to be lakhiraj, and order the value of the stamp of appeal to be given to the appellant.

ZILLAH MOORSHEDABAD.

PRESENT: D. J. MONEY, ESQ., JUDGE.

THE 8TH FEBRUARY 1849.

No. 167 of 1848.

Regular Appeal from a decision of the late Moulovee Mahomed Mobeen, Moonsiff of Gowas.

Gungagovind Mundul and Ramsoonder Mundul, (Defendants,) Appellants,

versus

Sartuk Mundul, (Plaintiff,) Respondent.

CLAIM preferred 20th May 1848, for Company's rupees 212-11-3, decided 16th September 1848.

The plaint states that the defendants had borrowed from the plaintiff 299 rupees to carry on business with. When the time arrived for the adjustment of the accounts, they were unable to pay the debt at once, and paid only 87 rupees, executing for the remaining amount due a bond, payable by instalments on the 5th Phalgoon 1254, in which it was stipulated that the debt should be paid in different sums on different dates. The defendants failed, however, to perform their promise, and the plaintiff sued for rupees 212-11-3, including interest.

The defendants admitted the original debt, but pleaded that they had paid it, and that the plaintiff had forced them to sign the instalment bond.

The moonsiff decreed the claim of the plaintiff, and the defendants appealed from his decision.

On perusal of the papers it was discovered that, in every paper filed by the plaintiff, the name of Gungagovind appeared as defendant. But Gungagovind, in his answer, and in every paper which he filed, wrote his name Gungaram and not Gungagovind. As the moonsiff gave his decree without ascertaining which of the names was correct, I consider it incomplete, and therefore admit the appeal, and remand the case for re-trial with reference to this point. The value of the stamps on the petition of appeal will be returned to the appellant.

THE 8TH FEBRUARY 1849.

No. 168 of 1848.

Regular Appeal from the decision of Baboo Gooroopersaud Bose, Moonsiff of Kandhee.

Puresh Gorai, (Plaintiff,) Appellant,

Rajib Lochun Odhicarree, gomastah on the part of Brojo Soonder Chowdhree, Ijaradar of Goysabad, (Defendant,) Respondent.

CLAIM at double the amount of Company's rupees 1-11-8, paid on account of rent by the appellant, instituted on 20th April 1848, and decided on 16th August 1848. Action brought because the defendant had withheld a receipt for the payment.

The defendant pleaded that he had been gomastah of the plaintiff's village from 1250 B. S., and never collected rent from any ryut without giving a dakhila; that rupees 1-11 was still due from the plaintiff on account of the last instalment of the year 1254 B. S.; and that because the period of a farming lease, commencing from 1250 B. S., was about to expire, the ryuts had conspired not to pay the last instalment of rent, and that eight similar actions had been brought against him.

The moonsiff of Chowkee Kandhee considered the case *got up*, and dismissed it.

As from the admission of the plaintiff it is in evidence that the defendant had never before refused a receipt, during nearly the whole period of the lease, I agree with the moonsiff, and see no grounds for interfering with his decision, which is accordingly confirmed with costs.

THE 8TH FEBRUARY 1849.

No. 173 of 1848.

Regular Appeal from the decision of Buboo Gooroopersaud Bose, Moonsiff of Kandhee.

Sheikh Golam, (Plaintiff,) Appellant,

versus

Rajib Lochun Odhicarree, (Defendant,) Respondent.

CLAIM at double the amount of Company's rupees 1-15-2, preferred 20th April 1848, decided 10th August 1848.

The circumstances of this case being precisely the same as in case No. 168 of 1848, I see no ground for interfering with the decision of the moonsiff, and therefore confirm it, and dismiss the appeal with costs.

THE 26TH FEBRUARY 1849.

No. 176 of 1848.

Regular Appeal from the decision of the late Moulvee Mahomed Mobeen, Moonsiff of Gowas.

Bishonath Roy, (Plaintiff,) Appellant,

versus

Akbordee Shekh, (Defendant,) Respondent.

THE suit was instituted by the plaintiff, on the 30th May 1847, for a bond debt, amounting to rupees 29-13-6, principal rupees 19, and interest, rupees 10-13-6, and decided 11th September 1848.

The bond was proved by witnesses to the execution of it. The defendant denied it.

The moonsiff summoned the plaintiff, being suspicious that the plaint was in a fictitious name, and, on his not appearing, dismissed it. As the execution of the bond was proved, and the plaintiff's vakeel in attendance, I consider the decision irregular with reference to Section 15, Regulation III. of 1793, and to the Circular Order of the Sudder Dewanny Adawlut of the 29th July 1809, which provides that, if a plaint is proved to be in a fictitious name, it is liable to be nonsuited. I therefore admit the appeal, and return the case for re-trial. The stamp value of the petition of appeal will be returned to the appellant.

THE 26TH FEBRUARY 1849.

No. 179 of 1848.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Laulbaugh.

Michael Steffel, (Defendant,) Appellant,

versus

Hurro Churun Pundit, (Plaintiff,) Respondent.

CLAIM preferred on the 22nd February 1848, for 30 rupees, the balance of a sum owing to the plaintiff, which he agreed to take from the defendant in part payment of wages, and a debt due to him: decided on the 16th November 1848, in favor of the plaintiff.

The defendant acknowledged that the written agreement put in by the plaintiff, in which the above balance is specified, was signed by him, but pleaded that out of the balance 20 rupees had been paid, leaving only 10 rupees due. He could not, however, furnish any proof of the part payment, though he was allowed more than the usual time for the purpose. His charge of neglect on the part of the pleader is not substantiated. I see no ground, therefore, for interfering with the moonsiff's decision, and dismiss the appeal with costs.

THE 26TH FEBRUARY 1849.

No. 180 of 1848.

Regular Appeal from the decision of Baboo Dwarkanauth Roy, first grade Moonsiff of Laulbaugh.

Parties the same as in Case No. 179.

CLAIM for rupees 20-8, balance of wages due from 1st June 1846 to March 1847, amounting at 5 rupees *per mensem* to 50 rupees, of which rupees 29-8 had been paid.

The defendant admitted the service, but denied the debt. He could not, however, prove the payment of the wages, though more than an ordinary period was allowed for the purpose, and the plea of neglect on the part of his pleader is inadmissible. I therefore confirm the moonsiff's decree, and dismiss the appeal with costs.

THE 27TH FEBRUARY 1849.

No. 10 of 1849.

Regular Appeal from the decision of Baboo Petumber Mookerjea, Moonsiff of Zeeagunge.

Bhowannee Ghose, (Defendant,) Appellant,

versus

Goordyal Sircar, (Plaintiff,) Respondent

THE suit was instituted on the 3rd February 1848, for rupees 41-13-15, balance of account for goods supplied, and decided 30th December 1848.

This case was once before appealed to this court by the defendant, in conjunction with his son, Kalee Churn Ghose. The moonsiff had given an *exparte* decree in favor of the plaintiff, in consequence of the defendants not having filed their answer within six weeks.

The late judge Mr. Russell admitted the appeal, and returned the case for re-trial.

The moonsiff on re-trial heard the evidence of both parties and examined their respective accounts. In the account-book of the defendants there were erasures which threw suspicion upon their statement. The plaintiff's account was clear and in detail. Both accounts *tallied,* with the exception of two or three items that had been altered to *larger* amounts in the defendant's account-book. The *original* items were clearly legible. The altered total of the altered sums was incorrect. The moonsiff decreed 32 rupees 4 annas, excluding from his decree 6 rupees and 10 gundahs, illegal interest, and 12 annas as a doubtful item.

One of the defendants appealed against the decree, on the ground that the moonsiff had relied on some parts of the defendant's account while he mistrusted others. I see no reason for interference with the decree, and therefore confirm it, and dismiss the appeal with costs.

ZILLAH MYMENSING.

PRESENT: R. E. CUNLIFFE, ESQ., JUDGE.

THE 8TH FEBRUARY 1849.

No. 34 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 10th August 1847.

Chundrabullee Dossea, mother of Burdakaunt *alias* Gopal Kishen Doss, (Defendant,) Appellant,

(Kistanund Podar and Aradhunee Dossea, Defendants,)

versus

Bheemchunder Sha, (Plaintiff,) Respondent.

RESPONDENT, having obtained a decree against the above defendants, requested the property of Aradhunee should be sold in execution thereof, on which appellant, wife of the other defendant, and sister-in-law of Aradhunee, objected, claiming the whole of her property as having been granted by Aradhunee by a deed of dan putr, dated the 8th Kartick 1251, for the service of a household idol, Gopal Takoor, of which her son, Burdakaunt, had been appointed sewait. The objection having been admitted, respondent sued to cancel the dan putr, and to cause the sale of the property in satisfaction of his decree. No defence was made by appellant, and the principal sudder ameen passed a decree in favor of respondent, the grounds of which are detailed, and in which I fully concur, in suit No. 70 of 1846, instituted by appellant against Aradhunee Dossea and others, to uphold this very dan putr. The principal sudder ameen not only dismissed her claim, but inflicted a fine under the provisions of Section 12, Regulation III. of 1793, notwithstanding which no appeal therefrom has been instituted. In appeal the excuse for not having defended the suit is, that appellant was absent on a pilgrimage, which is extremely frivolous, for she was at the time carrying on her own suit regarding the same property. The appeal is therefore dismissed. Costs to be paid by appellant.

THE 8TH FEBRUARY 1849.

No. 35 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 13th August 1847.

Syed Mahomed Shah, (Plaintiff,) Appellant,

versus

Rajkishen Rai, Radhanath Rai, and others, (Defendants,) Respondents.

APPELLANT states Koochallee Khan left an estate consisting of 2 annas of pergunnah Attya and the kharija talook, Hijalea, &c.

to 3 gundahs 2 cowrees of which his daughter, Bannoo Khatoon, succeeded, and married Raza Allee, and, dying without heirs, Raza Allee succeeded to her rights, and married appellant's sister, Taliboonnissa, both of whom died without heirs, and that he obtained a decree for 7 cowrees of the 2 annas of pergunnah Attya. Birahim Allee, Koochallee Khan's son, having sued another party for the kharija talook, Hijalea, &c., including 8 annas kismut gram Attya, Raza Allee set forth his claim, and was referred to a civil suit, and appellant having inherited through Raza Allee, accordingly sued Radhanath Rai, Birahim Allee, and others, and obtained a decree from the principal sudder ameen, dated 26th December 1831, which was confirmed by the judge on the 23rd February 1835. On taking out execution of that decree, Rajkishen Rai objected to possession of gram Attya being given on the plea of possession under a deed of sale from Radhanath Rai, which objection was admitted by the sudder ameen on the 25th March 1842, and the order upheld by the judge on the 9th March 1843, who declared possession could not be granted until Radhanath Rai's decree against Birahim Allee had been cancelled; and as Birahim Allee had no right to dispose of his property, he now sues to cancel that decree and obtain possession with wassilat of 7 cowrees of 8 annas kismut gram Attya, as in like manner he had obtained a decree against Bhychurrun Singh, cancelling the sale of the same portion of kismut Dobail by Birahim Allee.

Respondent replied that the suit was barred by lapse of time for reasons stated, and also that the valuation of the suit was incorrect, having been made at three times the alleged jumma; but it is neither an entire mehal, paying revenue to Government, nor a specific portion thereof with a defined jumma. The principal sudder ameen, without noticing the latter objection, which ought to have been first decided, proceeded to declare the suit barred by lapse of time. The suit is therefore remanded for decision of that point.

THE 9TH FEBRUARY 1849.

No. 36 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 21st August 1847.

Ramgopal Turfdar, and after his death, Puddolochun Turfdar, (Defendant,) Appellant,

versus

Syed Mahomed Shah, (Plaintiff,) Respondent.

THE appeal in this case was originally decided by me on the 7th March 1847, *vide* printed Decisions for that month, and remanded for re-trial, because the principal sudder ameen had omitted to record his reasons for giving a decree against the appellant. A fresh appeal has been instituted, and I am again under the necessity of

remanding the case for re-trial, as the principal sudder ameen has omitted to notice the objection urged by appellant, in his answer, that the suit was barred by lapse of time, although the Circular Order of the 13th September 1843, was quoted. The suit is therefore remanded to the present principal sudder ameen for decision, in the first place, of that objection; and, if he considers it groundless, he will then decide the case on its merits.

THE 9TH FEBRUARY 1849.

No. 37 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 24th August 1847.

Mahomed Kulleem, (Plaintiff,) Appellant,

versus

Chundrabullee Dibia, Bhobunmye Dibia, and others, (Defendants,) Respondents.

APPELLANT states his ancestors obtained a talook kismut Bhaugulpore, in the nankar mehal of the former zemindar of tuppa Kooreekhye, long before the decennial settlement, in the name of Buktyar Khan, at a jumma of Arcot rupees 53-5, of which his family had uninterrupted possession, and when the decennial settlement was made with the zemindar in Sicca rupees, his father, Mahomed Moorad, obtained a sunnud of the talook from the zemindar, Mahomed Ghaus, at a jumma of Sicca rupees 50, which has been paid to the successive zemindars until the estate was sold for arrears of revenue in Aughun 1240, and that he has also paid rent to the former zemindar from the beginning of 1245 to Jeit; and that the defendants in Assar dispossessed him of a portion of his talook, 4 doons 9 kanees, and he accordingly sues for possession with wassilat, deducting the rent.

Respondents, Chundrabullee and Bhobunmye, denying the existence of the appellant's talook, or his possession, state that at the time of taking possession of the estate, Ibrahim Khan having claimed as nankar, &c., 26 mouzahs, including mouzah Bhaugulpore; a suit was instituted for their resumption, and the decree of the special commissioner declared that claim invalid, and that the mouzahs belonged to the zemindaree, which they had purchased; that the appellant's ancestors were, and the appellant is, the servant of the former zemindars, and has various old seals of theirs; and that if the claim was well founded, appellant would not have refrained from suing for nine years.

Appellant replied that although the lakhiraj has been declared invalid, the zemindar is only entitled to rent and not to dispossess; that his ancestors were not servants of the zemindar, and that long before the purchase Sulabut Khan and others, in collusion with the

former zemindar, dispossessed him of half a baree in this talook, on which he and his brother, Mahomed Mooneer, sued Sulabut Khan and others and the former zemindars, and obtained a decree, dated the 24th February 1817, and also obtained a decree for rent in the moonsiff's court against Mahomed Rufeek on the 28th April 1821, and holds dakhilas of the different farmers of the estate.

The principal sudder ameen dismissed the claim, on the grounds that the two sunuds appeared to him to have been written on old paper long after the dates they bear, and that the signature of Mahomed Ghaus, on both, appears to have been written at the same time, although there is an interval of seventeen years between them; that the seals appear to be that of the zemindar, but that may be accounted for by the appellant having been a servant of the former zemindar, who may have affixed the seal to blank paper, and which he may have filled up afterwards with the writings now on them; and that the sunuds having been deemed recent creations, the talook cannot be considered as having been acquired before the decennial settlement, and accordingly the auction purchaser is entitled to possession under the provisions of Section 30, Regulation XI. of 1822; and for the same reasons the testimony of the witnesses adduced on the part of the appellant, the decree of the sudder ameen, dated 26th February 1817, and copy of decree of the moonsiff of Niklee, dakhilas, and copy of roobakaree of the Sudder Dewanny Adawlut, dated 5th August 1845, will not avail him.

In this decision I cannot concur, as I consider the appellant has established his right to possession of the talook, on the grounds of possession before the decennial settlement. He has adduced two sunuds, granting the talook, dated, one the 25th Kartick 1183, and the other the 25th Assar 1199, when the jumma was converted into Sicca rupees; and I see no reason to doubt their genuineness. In my opinion they do not appear to have been lately written on old paper; on the contrary, the appearance of the writing of the body of the document, and the impress of the seal would lead to a different conclusion, that is, that they were executed as long ago as the time alleged; and with regard to the signatures of Mahomed Ghaus, they appear to have been written with a different ink than the rest of the documents, and the ink has not sunk in and spread as would be the case if lately written on such very old paper; in character too, though not in the thickness of the strokes, the signatures correspond with the signatures of Mahomed Ghaus on two sunuds filed in the case of these respondents *versus* Tareenee Dossea, decided by me on the 24th February 1848, which case was sent for, and the signatures on the sunuds compared. The existence of the talook is further proved by dakhilas of the years 1219, 1221, 1222, 1229, 1231, 1243, and 1244; none of these, it is true, are of a date previous to the decennial settlement, but if appellant had the means of fabricating the sunuds it would have been equally

easy to fabricate dakhilas, and the decree of the sudder ameen, dated 24th February 1817, tends to corroborate the existence of the talook previous to the decennial settlement, for in that suit, to which the former zemindars were also a party, the appellant calls it the talook of his grandfather, a fact not denied by any of the parties to the case, and which would shew its existence long before the institution of that suit, and probably before the decennial settlement. The copy of the moonsiff's decree of the 27th April 1821, for rent decreed in favor of appellant, shews subsequent possession, which, as well as dispossession at the time alleged, by the respondents, is proved by the witnesses adduced by him; and the rejection of the former zemindar's claim to hold the mouzah in which this talook is situated as lakhiraj, cannot affect appellant's right to possession of a talook, which, I am of opinion, was in possession of appellant's ancestors previous to the decennial settlement. The decree of the principal sudder ameen is accordingly reversed, and appellant will receive possession of the quantity of land claimed, with wassilat, deducting the amount of the rent, from respondents, by whom all costs are to be paid.

THE 10TH FEBRUARY 1849.

No. 40 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 16th September 1847.

Ramdhun Surmah Ray and Munneram Deb, (Plaintiffs,) Appellants,

versus

Puddumlochun Surmah and others, (Defendants,) Respondents.

APPELLANTS state there are 4 arras of lakhiraj land, in Pookulgaon, pergunnah Raidoom, recorded in the register of such lands in the collector's office, in the name of Hurreeram Bhuttacharj, from whom it had descended to the respondents, Ramlochun Chukurbuttee, Hurchunder Surma, and Oma Dibia's husband, Ramakaunt Bhuttacharj, from whom he got a jote of 2 arras 10 cottahs in Kartick 1240, and on 3 parcels 12 cottahs of it sowed kullye, in Kartick 1241, and afterwards purchased from them, on the 22nd Maugh 1241, 1 arra 5 cottahs in the above 2 arras 10 cottahs, and obtained possession; that certain of the respondents by force cut the kullye he had sown in Chyte 1241, for which he sued them in the moonsiff's court, who referred him to a civil court on the 28th Phalgoon 1241, and the next month they dispossessed him of the 1 arra 5 cottahs, for possession of which with wassilat he now sues them, and also the sellers. The respondent Puddumlochun Surma, who alone defended the case, denied that the land was the lakhiraj of Hurreeram Bhuttacharj, or the sellers in possession, but included in the talook

Pokulgaon, recorded in the zemindar's sherishta in his great-grandfather's name, and when his father divided it with his cousins, he got these 4 arras of land in excess in his share, and have had possession ever since; that he let the 3 parcels, 12 cottahs in Bund Ayrdhuree in 1240 to Bunwarree Dibia, who had possession, and giving the whole of the 4 arras in farm to certain of the respondents for four years in 1241, and she not giving them a kubooleeut, or paying rent, they attached 1 cottah of kullye, and this suit has been got up out of spite by the appellant, her brother; that the farmers do not pay him, and he is about to sue them; that in the former case, appellant said he held the 2 arras and 10 cottahs on jote, and now says had bought a portion on the 22nd Maugh 1241, and also admitted he and his father were in possession from 1215 to 1240.

Appellant replied that respondent did not obtain the 4 arras in excess, and has not stated why; that of the 4 arras, 1 arra 5 cottahs were bought by Sheik Joomun and Gungaram Bund from the same sellers, and that respondent made an exchange with them in Phalgoon 1241, giving them 1 arra 1 cottah in his talook Arra, and of which they are still in possession; alleges he did state in his plaint, &c., in the former case, that he had purchased the land in question; that respondent was in possession under a pottah from Ramakaunt, and not as the proprietor; and that the remaining 1 arra 6 cottahs is still in the possession of the sellers, or their heirs.

The principal sudder ameen's decision is as follows: "The question of lakhiraj land having been raised, the collector was called upon to furnish a report under Regulation II. of 1819, which he has done, but that does not shew that the land claimed by the plaintiff is such (although mention is made that in the village in question there are 4 arrahs of land recorded as lakhiraj in the name of Hurreeram Bhuttacharj;) it is therefore to be assumed that plaintiff has failed to establish the fact of the lands claimed by him being lakhiraj," (which is contrary to Section 30, Regulation II. of 1819, the final decision resting with the civil courts.) "Moreover, the document which he produces as a sunud in support of the alleged lakhiraj, which is dated so far back as 102 years ago, *i. e.* 1152, is doubtless a forgery, because from its appearance, that is, the condition of the paper, the ink, and the gum rubbed over it, I am satisfied the instrument has been recently written on old paper, which, for the sake of giving a still older appearance, has been smoked over. The sunud being disposed of, it only remains to notice the kubala on which the plaintiff alleges to have purchased," and after recording the reasons why he does not consider the execution of the kubala to have been proved, dismissed the suit. In my opinion the principal sudder ameen has disposed of not only the sunud, but the suit, very summarily. As the suit is remanded for investigation of other points, I shall only observe with regard to the sunud that the principal sudder ameen ought to have sent for and compared the origi-

nal sunud with the copy of it directed to be registered in the collector's office by Section 25, Regulation XIX. of 1793. The points for decision have not been carefully recorded as required by Section 10, Regulation XXVI. of 1814. What have been omitted, and will assist greatly in elucidation of the case are stated below. The principal sudder ameen will call upon appellant to produce proof of the land being lakhiraj, possession by the sellers, and dispossession by the respondent at the time alleged; of the purchase of 1 arra 5 cottahs of the same lakhiraj land from the same parties by Sheik Joomun and Gungaram Bund, and subsequent exchange between them and respondent, and that the remainder of the 4 arras, viz. 1 arra 6 cottahs, is in possession of the sellers or their heirs, and that a portion thereof was let to the respondent, Puddumlochun, and his father, and that they were not in possession as proprietors. From respondent, Puddumlochun,—that he and his ancestors were in possession of the land claimed as a part of their talook, that 3 parcels of it, 12 cottahs, were let by him in 1240 to Bowanee Dibia, and in farm to certain of the respondents in 1241, and then decide the case on its merits.

THE 12TH FEBRUARY 1849.

No. 39 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated 11th September 1847.

Mr. E. K. Hume, Mr. Gasper, Mrs. Eugenia Gasper, Mr. O'Dowda, Receiver, &c., of the estate of Beebee Mariam and Mrs. Aratoon, (Defendants,) Appellants,

versus

Bishisseree Dibia, wife of Brijkishwur Chukurbuttee, (deceased,) (Plaintiff,) Respondent.

RESPONDENT states there is a talook recorded in the zemindaree serishtah, in the name of Manikram Dhur, in pergunnah Hooshenshye, the property of Ramkishub Dhur and Goureekaunt Dhur, in Para Bulrampore, and in Bulrampore *alias* Nagpore, and other mouzahs, the jumma of which is Sicca rupees 142-5-6; that 8 annas 10 gundahs of Bulrampore *alias* Nagpore belongs to this talook, of which she purchased 5 annas 10 gundahs from the above proprietors on the 30th Chyte 1240, registered the deed of sale, obtained possession, and paid the rent; and that the appellants dispossessed her from Bysack 1241, and she now sues for possession with wassilat.

Appellants replied that, though there was in that talook, 8 annas 10 gundahs Bulrampore, recorded in the serishtah of their zemindaree, at a jumma of Sicca rupees 45, there was no other Bulrampore *alias* Nagpore, or any Para Bulrampore, and that the jumma of 5 annas 10 gundahs cannot be rupees 33-5-10, as stated by respondent; that Manikram dying, and the jumma not being realized, his heirs neither caused their names to be recorded or paid the rent,

so the talook was taken in khas teyseel from 1236, and has been in their possession for 18 years, which bars the suit, and that the remainder of mouzah Bulrampore, talook Nundram Dhur, was also attached, for possession of which Seebram Dhur sued them, but his claim was dismissed.

Respondents replied there was 8 annas 10 gundahs of Bulrampore *alias* Nagpore, *i. e.* Para Nagpore, belonging to the talook, that Ramshurn Chukurbuttee and others sued for and obtained a decree for possession of mouzah Dhurgaon, &c., belonging to this talook, notwithstanding appellants' defence that it had been attached since 1236; and Seebram Dhur's talook being a separate one, she has nothing to do with it.

The principal sudder ameen decreed in favor of respondent, considering her claim proved by the documents and evidence adduced.

In appeal, it is urged that the petition of Roopram Surma, dated 25th Sawun 1240, a copy of which respondent filed, has not been attested, and that a copy of it was not sent to their naib as requested; and that he only replied that there was a mouzah Bulrampore in this talook, but not a Bulrampore *alias* Nagpore, and none such in the copy of the punjsala which they have filed; that respondent ought to have filed kubooleeuts of the ryuts and steeth papers; that Rubeoollah Mundul and Debeepershad Surma sued Ramkishub Dhur, &c. for 8 annas of Bulrampore, and obtained a decree on the 29th June 1838; that they petitioned the principal sudder ameen to allow them to shew and take back their zemindaree papers, without which they would be much inconvenienced, which was refused.

I see no reason to interfere with the decision of the principal sudder ameen. The respondent's purchase has been proved by a registered kubala, and the witnesses to it. That there is a mouzah in the talook called Bulrampore *alias* Nagpore, I consider proved by the following documents, and it must be recollected there is another mouzah called Para Bulrampore:—the decree in the suit of Rubeoollah Mundul and others *versus* Ramkishub, in which plaintiff sues for possession of 8 annas 10 gundahs Bulrampore, and 8 annas 10 gundahs Nagpore—kyfeut of the canoongoes, which mentions Bulrampore and Para Nagpore—the copy of the petition of Roopram Surma in execution of a decree against Seebram Dhur, proprietor of talook Nundram Dhur, in which the petitioner requests the court to ascertain by a perwannah to the naib of the zemindars whether there was not a mouzah Bulrampore *alias* Nagpore in that talook, on which an order was passed consenting to the requests. Appellants object that a copy of this petition was not sent to the naib. Perhaps not, but it was in their power to produce the perwannah issued on him, which would have proved whether the question had been fairly put to him or not. Copy of Mr. Aratoon's grounds of appeal in the case of Seebram Dhur, respondent, in which he mentions Bulrampore and

Nagpore. Appellants produced no proof that the suit was barred by lapse of time, and no kubooleeuts, or other documents, in proof of khas teyseel; and their petition about their zemindaree papers was presented about seven months after their documents had been filed, and three days before the decision of the case; and that the talook was not attached, as alleged by them, in 1236, is proved by the decree of the judge, dated 20th July 1843, in the case of Mr. Vaughan, appellant, *versus* Ramchurn Chukurbuttee. The appeal is therefore dismissed, and the decree of the principal sudder ameen confirmed. Costs to be paid by appellants.

THE 12TH FEBRUARY 1849.
No. 41 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 20th September 1847.

Bishennath Surma Rai and Seebnath Surma Rai, (Plaintiffs,) and Kishnakishwur Surma, (Petitioner,) Appellants,

versus

Hurindurnarain Chukurbuttee, adopted son of Lukeenarain Chukurbuttee, (deceased,) and his widows, Bubunisseree Dibia, Joydoorga Dibia, and Kumlakaunt Chukurbuttee, (Defendants,) Respondents.

THE two first appellants allege that their father and Lukeenarain Chukurbuttee having agreed to give Meer Fuzzullah rupees 1,001, on a deed of conditional sale of certain property, their father gave 250 rupees 4 annas to Lukeenarain, which he paid with the remainder of the mortgage money to Meer Fuzzullah at Nusseerabad, on the 27th Chyte 1240, and, in the absence of their father, took a kut-kubala in his own name alone, but after a foreclosure had been effected Lukeenarain gave their father an ikrar that he would give him possession of a 4 annas of the property after obtaining a decree, or one-fourth of the redemption money if paid, and afterwards their father paid Luckeenarain 26 rupees on account of costs. The money due on the kut-kubala having been paid, Lukeenarain's heirs received it on the 4th February 1846, and they accordingly sue for one-fourth thereof with interest. They also state their father paid 11 annas of the costs of the foreclosure, but not when. At a subsequent stage, the petitioner came forward and alleged he had in like manner given to Kantonauth rupees 125-2 of the 250-4, paid by Kantonauth Surma to Lukeenarain, and that he and the plaintiffs had agreed to make a joint suit, but they had fraudulently sued alone. The plaintiffs admitted the claim, and said they were not aware that he was a partner in the transaction with their father until they examined their accounts, but did not notice his assertion that they agreed to sue jointly, which is the more singular as they had named him as a witness. Respondents denied receipt of money

from, or giving ikrar to the plaintiff's father, and if the claim was correct he would have sued sooner, and come forward in the foreclosure case, or in the regular suit, and also receipt of the 26 rupees and the 11 annas; and as the ikrar was given after the foreclosure, there was no necessity for paying the costs of it; and that as the suit had gone through several courts up to the Sudder Dewanny, the costs have been 1,000 or 1,200 rupees. Plaintiffs replied they sued as soon as the money was taken, and that the costs had not been as much as stated.

The principal sudder ameen dismissed the suit, on the grounds that the evidence of not one of the witnesses to the ikrar had been taken, and although one witness has given evidence on the part of plaintiffs, and says he was the writer of the ikrar, there is no mention of it on the document, and that it is singular that the plaintiffs' father did not come forward during the long time the mortgage transaction was pending.

In appeal, it is urged that the appellants caused the attendance of three witnesses, viz. Kaleekinkur Chukurbuttee, writer of the ikrar and mooktar of Lukeenarain, Hurkishwur Chukurbuttee, and Chooloo Sotar, that Hurkishwur, making various excuses, was allowed to go away without giving his evidence, and Chooloo also went away without doing so, and that they had petitioned the principal sudder ameen to cause the attendance of Hurkishwur Chukurbuttee and others, and, having been directed to swear to the necessity of their depositions being taken, were about to do so when the case was decided. The grounds of appeal are frivolous. The plaintiffs were ordered to swear to the necessity of Hurkishwur's evidence being taken, on the 5th August, and the suit was not decided till the 20th September, besides which their witness, Kalleekinkur Chukurbuttee, says that, to the best of his recollection, the rupees 250-4 was paid by Kuntonauth at the time the ikrar was given, while plaintiffs allege it had been paid about two years before. The appeal is dismissed, and the principal sudder ameen's decree confirmed. Costs to be paid by appellant.

THE 15TH FEBRUARY 1849.
No. 1 of 1848.

Appeal from the decision of Ameerooddeen Mahomed, Officiating Principal Sudder Ameen of Zillah Mymensing, dated the 6th January 1848.

Mr. K. S. Brodie, (Plaintiff,) Appellant,

versus

Anundkishwur Rai, Zemindar, and 67 others, (Defendants,) Respondents.

APPELLANT sues the respondents for loss incurred through their acts, and states he cultivates Mudia Chur, &c., belonging to his indigo

factories, Russeedpore and Chundra, by neej cultivation, and by advances, and that the Rai respondent, being about to put a stop to the business of those factories, caused the mohurrur of Chundra Rubelochun Chund to be seized and carried off by his burkandauzes, for which a complaint was made in the foujdaree on his part by Onoopnarain Soor; that the Rai respondent took an ikrar from all the people, manjees, coolees, &c., living on his estate, not to work for him, and they were accordingly absent from the 15th Assar 1249 to the 21st, seven days, when some of the indigo, fit to cut, was overflowed and spoilt, as well as some of that which had been cut; that on the petition of his servant, Onoopnarain, the mohurrur of thanna Hajeepore and the acting nazir were sent to the spot by the magistrate, and caused some of the people, who worked for him, to attend, and although they did not state the circumstances of the case, still their urzees prove that some of the indigo, which was ready to be cut, was flooded and some spoilt, that nearly 500 beegahs of indigo, sown by himself, or under advances, was spoilt, and that he was referred to the civil court by the magistrate on the 29th July 1841. The injury incurred in different places is stated below :

	Beegahs.
Mudia Chur,..................................	22
Ooa ditto, ...	20
Bagbaree, ...	50
Mamabagena, Phoolsa, and Rampoopore,	100
Pukeemaree,..................................	70
West Chur of Jungle Dhee,..............	45
Undur Baree, and Sadoopoor, ...	17
Poora Chur, ...	50
Total, ...	374

Of which there was ready for the first cutting 290 beegahs, which, at 10 bundles per beegah, is 2,900 bundles, and ready for the 2nd cutting, 84 beegahs, which at 5 bundles per beegah, is 420 bundles, making a total of 3,320 bundles, the produce of which 200 bundles per maund is 16 maunds 24 seers, which, at the price of the preceding year 1248, viz. rupees 180 per maund, is rupees 2,988, which he is entitled to receive from the respondents, for the loss incurred by their acts.

The Rai respondent denied causing the absence of the people of the factories, or taking an ikrar from them not to work for the appellant, which he has not stated when it was taken, that appellant having complained against him in the foujdaree, and the case being dismissed, this suit has been instituted out of spite, that the appellant cut the plant of the lands, the subject of the suit, and made indigo of it, and requested proof might be taken that the appellant put the stalks of the plant, from which indigo had been manufactured, under the water, and shewed it to the nazir, who had been sent to investigate the

matter. It is unnecessary to detail the answer of the other respondents, as they were released when the suit was originally decided by the principal sudder ameen, from which decision both parties appealed.

The appeal of appellant was dismissed on default, and the decision of the principal sudder ameen confirmed as regards the Rai respondent, who having preferred a special appeal to the Sudder Dewanny Adawlut, this order was passed: "The principal sudder ameen, not having recorded, in his decision, the mode by which he assessed the damages, he was called on to explain. His explanation not being considered satisfactory, it is ordered that the special appeal be admitted, and the case sent back to be placed upon his file in order that the principal sudder ameen may assess the damages again in the presence of both parties, and record distinctly the grounds on which he fixes the amount." The principal sudder ameen having assessed the damages "undazee," *vide* decision of this court, 17th June 1847, the suit was again remanded to carry into effect the orders of the Sudder Dewanny Adawlut. The officiating principal sudder ameen, in his decision, from which this appeal has been instituted, has entered into the question, whether the appellant did incur loss from the acts of the respondents or not, though he ought to have confined himself to the points indicated in the order of the Sudder Dewanny: his decision on that point is therefore null and void. With regard to the damages, he does not consider them established, because the evidence of the witnesses of the appellant does not agree with each other, or with the plaint, an opinion I cannot concur in. He remarks in regard to Juggernath Sirkar that he says 282 beegahs of plant were destroyed, but omits to notice that the witness also said that was the amount he recollected, and referred to the chitta, written by himself, and on which he had marked off the quantity of land on which the plant was destroyed when he accompanied to the spot the foujdaree nazir sent to investigate the matter. That the witness could not detail from recollection the amount of plant destroyed in each place, is not surprising, as the injury occurred in eight different places. That Beerchunder stated nearly 5 or 600 beegahs of plant on neej cultivation and under advances had been destroyed, which agrees with the statement in the appellant's plaint, but the witness correctly stated the amount of plant destroyed in the neej cultivation, for damages to which alone, the principal sudder ameen has overlooked, the suit was laid. That Kooran Sheik said he knew that plant upon 374 beegahs had been destroyed, because he accompanied Juggurnath when the churs were measured, when they were under water, and in another place that they measured in Bysack and Jeit, and that the nazir and monshee measured the land. This statement, in regard to measurement, I consider only the loose way of speaking of an ignorant person, and that it is out of the question that he meant that the land was really measured under water, besides which he has stated as noticed

by the officiating principal sudder ameen, that, when he accompanied Juggurnath Sircar, the nazir, Mr. Clarke, and others, the amount of plant destroyed was noted by estimate, and the remark applies to the chittas having been written at that time by Juggurnath Sircar, who, in fact, only marked down on the chittas previously made the amount of damage. Besides the above there are two witnesses, Jaffer Sircar and Manoollah, who have correctly stated the quantity of plant destroyed on each of the churs. And therefore, considering it established that 290 beegahs of plant, first cuttings, and 84 beegahs of second cuttings, were destroyed on the lands detailed by the evidence of Juggurnath Sircar, Beerchunder, Sheik Koran, Jaffer Sircar, and Manoollah, and also that the produce of the first cuttings is 10 bundles per beegah, and of the second cuttings 5 bundles, and that 200 bundles produce one maund of indigo, I proceed to state the amount of loss which appellant has incurred, and the amount of damages I consider him entitled to—

290 beegahs of plant of first cutting, at 10 bundles per beegah,	2900
84 beegahs of plant of second cutting, at 5 bundles per beegah,	420
Total, ...	3320

which at 200 bundles per maund yields a produce of 16 maunds 24 seers of indigo. Appellant has valued the indigo at rupees 180 per maund, but that rate I do not consider he is entitled to, for from a copy of an account sale of the indigo of the year in question of the Bygunbarry concern extracted from the books of Fergusson Brothers and Co., duly attested by Mr. O'Dowda, receiver, I find the average value of the indigo sold to have been rupees 152-8, at which rate the calculation I consider ought to be made, for the account sale does not shew the price of the indigo manufactured at any particular factory. At that rate the value of 16 maunds, 24 seers, is rupees 2,532-4-9, but from that amount must be deducted as per account sale, for auctioneer's charges and commission, importing and delivering charges, godown hire, rupees 34-4-7, and commission at 2½ per cent. rupees 62-7-3, which leaves a balance of rupees 2,435-8-11; but appellant has made no allowance for cost of manufacture, and deducting on the gross amount 10 per cent, on that account, and which appears to be the usual deduction, *vide* the suit of Ramruttun Rai, appellant, *versus* Colville, Gilmore and Co., Sudder Dewanny Decisions, 18th April 1848, there would remain a balance of rupees 2,182-8-11. I am however of opinion that appellant is not entitled to a larger sum than was decreed him in the first instance, viz. rupees 1,818, for being dissatisfied with the sum decreed, he appealed and allowed the appeal to be dismissed on default. Accordingly it is ordered, that the Rai respondent pay to appellant the sum of rupees 1,818, if it has not been already realized, with proportionate costs. Appellants to pay the costs of the other respondents.

THE 16TH FEBRUARY 1849.

No. 2 of 1848

Appeal from the decisian of Ameeroddeen Mahomed, Officiating Principal Sudder Ameen af Zillah Mymensing, dated the 4th January 1848.

Ramgopal Turfdar, (Plaintiff,) Appellant,

versus

Nowruttun Beebee No. 1, Mahomed Molaim No. 2, Zummeeroodeen No. 3, Myhooddeen No. 4, Bahuroollah No. 5, Sheik Gadoo No. 6, Sheik Saduk No. 7, Mahomed Shah No. 8, Raichand Shah No. 9, and others, (Defendants,) Respondents.

APPELLANT sued to obtain from respondents, coparceners with him of talook Minnenewaz Khan, pergunnah Attya, the sum of rupees 3,876-3-6, principal and interest, of revenue paid by him on account of their shares, and in excess of his share, the jumma of which he states to be rupees 90-2-3, for the years 1248, 1249, and 1250; that he had previously obtained separate decrees against Nowshere Allee and others of the respondents for sums which, during the time the estate was under attachment, had been improperly credited by the collector to the revenue due from them, and that the rights and interests of Nowshere Allee, Rumzan Beebee, and Soorban Beebee, had been purchased by respondent No. 9.

Respondents Nos. 2 to 7 alleged they had paid the revenue of their share, the jumma of which they state to be Sicca rupees 30-7-10, and that appellant has not stated how much he paid for each shareholder. Respondent No. 8 denied being in possession, and stated he had sued Nowshere Allee and others for possession, that a butwarra of the talook had been effected according to which the jumma of appellant's share was rupees 768-10. Respondent No. 9 alleged he had paid in excess of his share, which he purchased on the 1st Jeit 1250, and that appellant's share of the jumma is rupees 784-6-5. Respondent No. 2 denied possession generally, but admitting possession of the mouzahs in the talook of Jaffer Allee, the revenue of which she had paid.

Appellant replied that the decrees in his favor, alluded to in the plaint, had been confirmed by the judge, and a special appeal therefrom rejected by the Sudder Dewanny Adawlut; that No. 8's plea of non-possession had been overruled in the suit No. 87: this suit was remanded for trial by me on the 26th March 1847, *vide* printed Decisions for that month, and especially for enquiry into the real amount of appellant's jumma, as had also been ordered by the Sudder Dewanny Adawlut on the 27th October 1846, in the case of appellant *versus* respondents No. 2 and others.

The principal sudder ameen decided both these suits at the same time, and dismissed the claims, on the grounds that the appellant had failed to prove what his share was and the amount of revenue pay-

able thereon, and what were the shares of the respondents respectively and the revenue payable thereon, and the arrears due on account of each of them.

An appeal from this decision in the suit remanded by the Sudder Dewanny Adawlut having been preferred, it was dismissed, and the principal sudder ameen's decree affirmed, 18th September 1848, page 829, of the printed Decisions.

In appeal, appellant urges that similar claims were decreed in his favor, upheld by the judge, and the special appeal rejected by the Sudder Court, in proof of which he has filed the decree of the judge, dated 29th January 1845, respondent No. 2, and others, appellants, *versus* respondents, and the order of the Sudder Court rejecting the special appeal; but on what grounds, that document does not state. It is true that in the suit abovementioned respondent No. 2 and others in this case pleaded that appellant's jumma was rupees 768-10, but no notice whatever was taken of the plea by the principal sudder ameen, or the judge, nor does it appear on what grounds the special appeal was rejected; and I do not therefore consider I am bound by the decree of the judge, dated 29th January 1845. The appellant having failed to establish the very first point, the amount of his own jumma, on which his claim is founded, the appeal is dismissed, and the decree of the officiating principal sudder ameen affirmed. Costs to be paid by appellant.

THE 19TH FEBRUARY 1849.

No. 3 of 1848.

Appeal from the decision of Ameerooddeen Mahomed, Officiating Principal Sudder Ameen of Zillah Mymensing, dated the 3rd January 1848.

Moolookchand Deo, (Defendant with others,) Appellant,

versus

Rajkishen Rai, (Plaintiff,) Respondent.

RESPONDENT sued to obtain possession with wasilat of kismut Kalaparah, appertaining to tuppa Luteefpore, which he purchased at a sale for arrears of revenue on the 26th Sawun 1241, and obtained possession in 1245, except the kismut in question, which the appellant and other defendants claimed as lakhiraj.

Appellant replied that respondent had not stated the share of the kismut, or the quantity of land in it belonging to his estate, or its boundaries, that 7½ gundahs lakhiraj was granted to his ancestors, Mooktaram Deb and Dhunneeram on the 22nd Bhadoon 1166, by the then zemindar, Golam Hyder, which was duly registered in the collectorate in 1202, by Mooktaram's sons, Rampershad and Dhunneeram; and that Rampershad's brothers, Joogulchunder and others, gave him 1 gundah 1 cowree thereof on the 24th Poos 1236, and,

not finding it sufficient, he purchased on the 24th Sawun 1247, in the same mouzah, but appertaining to the 8 annas, 14 gundahs 3 cowrees zemindaree of pergunnah Zynshahye, the lakhiraj baree of Mahomed Ruhman, and annexed it to the 1 gundah 1 cowree, which had been given him, and that defendant Joogulchunder and others (who did not file an answer) are in possession of the remaining 6 gundahs, 1 cowree, that according to the punjsala registry only 1 pie of the mouzah belongs to the respondent's zemindaree, of which the zemindars of the 15 annas, 15 gundahs have long ago dispossessed him.

The principal sudder ameen imperfectly recorded the points for decision. He called upon the respondent to prove what is the share of the mouzah appertaining to his estate, and that it is khirajee—I presume he meant the land in dispute is so—and upon appellant to prove that only 1 pie belongs to the respondent's estate and that there are 7½ gundahs lakhiraj in it. The principal sudder ameen dismissed the appellant's claim to hold 1 gundah 1 cowree lakhiraj in kismut Kalaparah, in the respondent's estate, because on the copy of the nuksha filed by the appellant, it is stated it is not known when it was filed, but only that it had been taken charge of on the 9th Chyte 1222, and that a decree of the Sudder Dewanny Adawlut, 27th February 1837, Assadoollah, appellant, *versus* Sumboochunder Rai, shews that such a nuksha is of no use; that if the nuksha had been filed, it would bear the signature of some omlah and the collector; that, although there is mention of a sunud, dated 22nd Bhadoon 1166, there are no remarks in the column for remarks, and if a copy of the sunud had been filed with the nuksha, a copy would have been filed and the fact mentioned in the collector's roobakaree; that the punjsala shews that the zemindar was Mahomed Munohur, and the sunud is stated to have been granted by Golam Hyder,—and decreed for 12½ gundahs, as recorded in the punjsala.

The principal sudder ameen has forgot that there is a long interval between the date of the punjsala and the sunud. The respondent has, however, filed in appeal a copy of a taidad for land in tuppa Luteefpore, in which the zemindar is stated to be Mahomed Monohur, of the year preceding the sunud set forth by appellant.

It is necessary therefore that appellant should prove that Golam Hyder was zemindar of tuppa Luteefpore at the period of the sunud granted by him, also that 1 gundah 1 cowree of the 7½ alleged lakhiraj was given to him at the time stated, and that the remainder thereof is in the possession of Joogul Chunder and others; that the zemindars of the 15 annas, 15 gundahs share have long ago dispossessed the respondent; and that a portion of the lakhiraj land now in his possession consists of, besides the 1 gundah 1 cowree mentioned above, the lakhiraj barree of Mahomed Ruhman Chowdhrey; and proof of his purchase thereof.

The principal sudder ameen ought also to have clearly ascertained from the collector whether a copy of the sunud had been filed,

or not, and why the nuksha, dated in 1202, was only taken charge of in 1222, and whether that was the case with the nukshas generally in this district, or an exception from the general rule, and also called upon the appellant to prove that such nukshas as he has filed a copy of, have been upheld by the civil courts. The appeal is decreed, and the suit remanded to the principal sudder ameen to take evidence and make enquiries on the points indicated above, and then decide the case on its merits.

THE 19TH FEBRUARY 1849.

No. 4 of 1848.

Appeal from the decision of Ameerooddeen Mahomed, Officiating Principal Sudder Ameen of Zillah Mymensing, dated the 7th January 1848.

Kaleekaunt Surmah Gangoolee, (Plaintiff,) Appellant,

versus

Kaleepershad Chukurbuttee, after his death, Chundramunnee Dibia No. 1, Kishenmohun Surmah Ray No. 2, and Ragoonath Surma Chukurbuttee No. 3, (Defendants,) Respondents.

APPELLANT states he, Mahamya Dibia, and Onnopoorna Dibia were proprietors of a talook in pergunnah Alapsing, to which 4 annas of kismut Beralshak belongs, of which the proprietors have joint possession with the exception of the neej jote and kamar lands, which are held separately; that in that kismut there are 13 pooras 10 cottahs of kamar, the jotes of Modoo Sirkar and Ledoo Sheik and Munna Sheik, two-thirds of which belong to him and one-third to Onnopoorna; that a dispute occurred about a parcel of land, the jote of Modoo and Ledoo, in bund Endail, in his kamar, which by an order, under Regulation XV. of 1824, dated 8th April 1829, was given into the possession of Mahamya Dibia, and he being about to sue her for it, she gave it up to him. After her death respondents, Nos. 1 and 3 and others, under plea of that order, dispossessed him on the 21st Sawun 1241, of the 13 pooras 10 cottahs except 4 cottahs 15 gundahs of Munna Sheik, and 15 cottahs 5 gundahs of Modoo and Ledoo Sheik's jote; and, being about to sue them, they gave up 2 poorahs 9 cottahs of those two persons' jote in Bysack 1246, and in Assar 1248, 6 cottahs, and 70 rupees wasilat, promising to give up the rest; and failing to do so, he sues for possession with wasilat of pooras 6-4-13-1-1.

Respondent No. 1 admits that the neej jote and kamar of the share-holders are held separately; that appellant and Onnopoorna have made kamars on ijmalee land in other villages, therefore she is in possession of the land in dispute; refers to the case under Regulation XV., which she says was about a large quantity of

land, given in favor of Mahamya, and appellant referred to a civil suit, and that the suit is barred by lapse of time, though how, is not clearly stated; denied that any land was ever given up as alleged, dispossessing appellant; and that two of the defendants have been included, because she intended to summon them as witnesses. Respondent No. 2 denied having any thing to say to the appellant's claim, and respondent No. 3 denied dispossessing appellant, and claimed a share in the talook.

The principal sudder ameen dismissed the suit as barred by lapse of time. He rejects the evidence of the witnesses on the part of the appellant to the giving up portions of land of which he had been dispossessed in Sawun of 1841, and rupees 70 wasilat, because no writings regarding them were executed, and that, although in the case under Regulation XV. of 1824, there is only mention of a parcel of land, and that it is not surprising that one parcel should contain 9 pooras, 7 cottahs; that 1 (out of 9) of appellant's witnesses has given evidence in favor of respondents' possession of Madoo Sirkar's jote since the date of the suit under Regulation XV.; and that the documents filed by appellant, being previous to the date of that order, cannot avail him. The principal sudder ameen appears to think the land now claimed to have been given into the possession of Mahamya Dibia by the order in the case under Regulation XV. of 1824, otherwise the suit is not barred by lapse of time; but that document contains no such proof, it was simply about one parcel of land in the jote of Madoo Sircar, without stating the quantity, and has no reference whatever to the jote of Munna Sheik, land appertaining to which is also now the subject of dispute; and the only proof of possession for a period which would bar the suit, which respondent has adduced, is the evidence of four witnesses, unsupported by a single document. Appeal is decreed, and the suit remanded to the principal sudder ameen to be tried on its merits.

THE 20TH FEBRUARY 1849.

No. 38 of 1847.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 17th September 1847.

Ramkaunt Sein, (Defendant,) Appellant,

versus

Hurchunder Chowdhree, (Plaintiff,) Respondent.

RESPONDENT sued appellant and others, who have not appealed, including appellant's brother, for rupees 542-5-6, principal and interest, on account of rent of a talook in his zemindaree from 1242, to Poos 1251, deducting the sums collected by the farmer, and after his death by respondent, and stated the jumma of the talook to

be rupees 58. Appellant denied that the jumma of the talook had been correctly stated by respondent, but did not state what it was, nor what is the share of each share-holder, nor how much due from each for each year, and how much and when collected; that their shares had been separated by arbitrators appointed by the civil court, and shares sold accordingly; that he had paid his share of the rent, but what that share is, is not stated, and had filed the dakhilas in the sudder ameen's court, where they were destroyed when the cutcherry was burnt down. Respondent replied that the shares were not separately recorded in his serishta, denied that appellant had filed any dakhilas, and alleged his own documents had been filed and destroyed by the fire. Appellant rejoined that dakhilas had been given in his father's name, which would not have been the case if the shares were not separately recorded in respondent's serishta, and requested the remaining dakhilas might be received.

The principal sudder ameen decreed the sum claimed against all the defendants on the evidence of the witnesses, including his naib and mohur-rur, on the part of the respondent, and no dakhilas having been filed by the appellant, or other proof of payment adduced.

In appeal, it is urged that the depositions of appellant's witnesses were not taken though in attendance; (this is intended to attach blame to the court, but the fact is that it was appellant's own fault that their depositions were not taken, for the witnesses were taken in charge by his mooktyar;) also that respondent ought to have stated the shares of each shareholder and the sum due from each, and in support thereof adduced the decree of the Sudder Dewanny Adawlut, dated 11th November 1840, Syed Bund Allee *versus* Allee Buksh. It is true that such a rule is laid down in that particular case, but as it is not a precedent published for the guidance of the lower courts I do not consider myself bound by it; besides which, a decree against the share-holders of a talook jointly is of daily occurrence, when the shares are not separately recorded in the zemindar's serishta. Appellant also adduced one original dakhila and copies on plain paper of two others. These I reject as unworthy of credit, because appellant failed to file them in the principal sudder ameen's court, though he particularly requested in his answer that the remaining dakhilas might be taken, besides which no reason is assigned for not having filed this original dakhila in the sudder ameen's court, with the others said to have been destroyed by fire. The appeal of appellant is dismissed, and all costs to be paid by him; but it is necessary to amend the decree of the principal sudder ameen, who has decreed against the heirs of the farmer. The claim was not for arrears of the rent of the farm, but simply for arrears of the rent of the talook of which appellant and the other defendants are the proprietors: It is accordingly ordered that the heirs of the farmer be released from all claim on account of this suit.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 10TH FEBRUARY 1849.

No. 13 of 1846.

Regular Appeal from a decision passed by Baboo Ramlochun Ghose Rai Buhadoor, Principal Sudder Ameen of Zillah Nuddea, on the 22nd of December 1845.

Bonomallee Bhuttacharj, farmer, on the part of the Receiver of the Supreme Court, (Defendant,) Appellant,

versus

Durrupnarain Sircar and Zahiroollah Mundul, (Plaintiffs,) Respondents.

THIS suit was instituted on the 9th of September 1844, to contest a summary award of the revenue authority, dated the 12th of July 1844.

The plaintiffs (now respondents) instituted this suit for the reversal of the summary award under the following circumstances. The defendant, styling himself the farmer of all untenanted lands in mouzah Phoolsurrah, fabricated a kubooleeut, dated the 5th of Sawun 1249 B. E., and on the 2nd of Jeit 1251, corresponding with the 14th of May 1844, instituted a suit against them (the present respondents,) under the provisions of Regulation VII. of 1799, in this zillah, and took out process against them. On the 29th of June 1844, Zahiroollah Mundul was arrested under the said process in the district of Barrasat, and on that day deposited the sum of 462 rupees, 12 annas in the treasury of that division with the intention of defending the suit, but on the 12th of July it was decided against him *exparte*, and without any proof being taking from the other party.

The plaintiffs (now respondents) deny having ever executed any engagement for the lands in question, or having ever had them in cultivation, and the only way in which they can account for the false claim being brought against them is, that they refused to cultivate indigo for a man named Oomeshchunder Pal Chowdhree, or to assist him in any way, and he had in consequence harassed them by instituting false complaints against them, in all of which he failed, and at last as a *dernier resort* he brought this false claim against them, and obtained an *exparte* decision in his favor.

The defendant (now appellant) replied that, on the 5th of Sawun 1249 B. E., the plaintiffs executed a kubooleeut in favor of his father, Bishnauth Bhuttacharj, at an annual rent of 535 rupees, 5 annas, on

stamped paper, for a period of three years, from 1249 to 1251 B. E., both inclusive, for the noksan (or untenanted) muhal, by which they agreed to pay in 1249 B. E. 301 rupees for that year, and from 1250 B. E., the full rent, viz. 535 rupees and 5 annas. They entered on their lease, and paid the stipulated rent for 1249, but for that for 1250 they only paid 117 rupees. The defendant therefore sued to recover the balance 418 rupees 5 annas, which, with interest, amounted to 447 rupees, 13 annas, 7 gundahs, and obtained a decree in due form from the collector for the amount, under the provisions of Regulation VII. of 1799. He was willing to exhibit as proof the plaintiffs' engagement (kuboolecut,) and to prove that they had the land in their occupancy. His father farmed the zemindary from the receiver of the Supreme Court, and after his death he (the defendant) succeeded to the estate. He denies having any connection with Oomeshchunder Pal Chowdhree, or knowing any thing about the several suits which the plaintiffs state were instituted against them.

The plaintiff replied that Oomeshchunder Pal Chowdhree's estate was in the receiver's hands, and that he (Oomeshchunder) took them in farm in the name of his servant, Bishnauth Bhuttacharj and is in occupancy.

The principal sudder ameen has recorded that it is merely necessary to decide whether the defence set up by the defendant (appellant) is good or not, and if the collector's award should be confirmed or reversed; and he then proceeds to record his reasons for rejecting the claim to rent set up by the defendant (appellant,) and reversing the collector's award: firstly, that the witnesses (three in number) who have appeared on the part of the plaintiffs (respondents) have proved that they never cultivated the untenanted (noksan) lands in mouzah Phoolsurrah; secondly, that from the report of the ameen who had been deputed to make local investigation, it was clear the plaintiffs never had the land in cultivation or ever paid rent for it; thirdly, that the evidence of five witnesses, who have appeared on the part of the defendants (appellants,) and who are their connections, tenants, and under their influence or control, and who swear to having received the rent of the lands from the jotedars, or actual cultivators, on account of the plaintiffs (respondents,) is not satisfactory or worthy of credit, because if it had been true the defendant would have had those actual cultivators examined as witnesses, and would have made them produce the plaintiffs' acknowledgements for the rents; fourthly, if it was true that the plaintiffs had taken the farm, and paid rent as set forth by the defendant in his reply, the defendant should have produced his village jumma-wassil-bakee accounts, and the remittance vouchers to prove his statements; fifthly, it is nonsense saying the plaintiff took a lease of the noksan, or untenanted lands, and then saying that the tenants paid rent on the part of the plaintiffs, because it is well known that noksan implies fallow, or given up lands, and if the land is cultivated it cannot be called noksan, and it has never

been known that this description of land has been leased, but if cultivated it is as ootbundee, or rent paid according to the produce; sixthly, it is clear from the record that the plaintiffs reside in different and distinct villages, at a distance of four or five coss from the lands they are said to have taken the lease of, and it is most unaccountable how they were allowed to engage for so large an annual rent, without being called upon for security; seventhly, it is very remarkable that the witnesses to the kubooleeut are two low common persons, when at Ranaghaut numerous respectable witnesses must have been obtainable; eighthly, the defendant, although desired to cause the attendance of the person who wrote the kubooleeut, and although he obtained a term to produce him in, has failed to take any steps for that purpose.

It appears from the record that after the ameen had given in his report the defendant (appellant) objected to it, and stated it was all false, and that the investigation said to have been made had not been made. The principal sudder ameen merely recorded upon it that there was no occasion to investigate the objections started. The objections were good, and should either have been enquired into or good and sufficient reasons recorded why no investigation was necessary, and more particularly as the principal sudder ameen has, in the second head of his decision, stated that from the ameen's report it is clear that the plaintiffs (appellants) never had the lands or paid rent for it. The appellant, amongst other objections to the decree, has urged this point, and I am of opinion that his objection is valid, and that until it is satisfied and refuted the ameen's report ought not to be considered as at all convincing or satisfactory. Had the principal sudder ameen not alluded to the report in his decree, it might not have signified whether it was true or not; but under any circumstances if an ameen's report is impugned in any way, it is incumbent on the court that ordered the investigation by the ameen, to enquire fully into all objections against it.

Under these circumstances, I am of opinion that the principal sudder ameen's decision has been hasty and without due investigation, and therefore, as provided for in Clause 2, Section 2, Regulation IX. of 1831, order that the suit be remanded for re-investigation, and then decided on its merits. The appellant to bear his own costs of appeal at present, and it will be decided when the case is finally disposed of who is to be charged with them. The value of the stamp for preferring the appeal is to be refunded to the appellant in the usual way.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 19TH FEBRUARY 1849.

No. 34.

Appeal from a decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 9th August 1847.

Bhyro Misser, (Plaintiff,) Appellant,

versus

Musst. Gurboo, (Defendant,) Respondent.

THIS is a suit for Company's rupees 113-1, principal, interest, and batta, due on a bond, dated 25th Jeit 1244, by which bond, it is stipulated, that certain lands in the possession of the borrower shall not be alienated, until the money is repaid. The defendant having denied the borrowing of the loan and the execution of the bond,—the principal sudder ameen, considering it unaccountable that, in a subsequent deed, signed by Ghosee, the deceased husband of the defendant,—by which deed, a lease or ijara of the same lands is given to the plaintiff in consideration of, and by way of security for the re-payment of a loan advanced to Ghosee by him, and which deed forms the subject of another suit between the parties, the object of the plaintiff in that suit, who is defendant in this one, being to cancel the said lease, on the ground of the money advanced having been repaid,—no mention is made of this loan, and that the amount was not incorporated in the loan of this deed of lease, and finding the evidence of the witnesses to the bond unsatisfactory, inconclusive, and contradictory,—on these grounds, and with reference to the provisions of Section 16, Regulation III. of 1793, dismissed the plaintiff's claim.

Now, though I do not find that the evidence is so inconclusive or contradictory, as the principal sudder ameen states, yet the omission to incorporate the amount of the tumussook in the loan for which the lease was granted, is a circumstance affording such strong reason to doubt the genuineness of the deed and the reality of the transaction, that the most positive assertions of Indian witnesses cannot be deemed sufficient ground for a decree. I note that plaintiff's suit on this very old bond was not brought till the defendant had instituted the suit to cancel the lease, another circumstance of suspicion. I therefore do not think it necessary to call on the respondent to appear and reply, and, dismissing the appeal, confirm the decision.

THE 19TH FEBRUARY 1849.

No. 35.

Appeal from a decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 9th August 1847.

Bhyro Misser, (Defendant,) Appellant,

versus

Gurboo, (Plaintiff,) Respondent.

THIS suit was instituted to cancel a lease granted by plaintiff's late husband Ghosee, in favor of defendant, and to reverse an order of the magisterial authorities, maintaining him in possession of the lands leased. The ground of the action is, that the loan advanced by defendant has been repaid, because defendant withheld the stipulated rent. The defendant denies the re-payment of the loan, and attempts to prove the regular payment of the rent stipulated.

The principal sudder ameen, considering the proof offered by him to have failed, decrees for the plaintiff, cancelling the lease, and the order passed by himself as deputy magistrate.

Appellant contends, among other things, that the petition of plaint is on a stamp of inadequate value, it being estimated according to the amount of the loan, rupees 15, and one year's rent rupees 24-3-3, stipulated by the deed sought to be cancelled: whereas, the decision under Act IV. of 1840, having awarded possession to him, the object of the action is to oust him, and get possession on the property of which the lease is in question ; and that the plaintiff ought to have been nonsuited, because, the lands being exempt from payment of revenue, the stamp should have been commensurate in value to 18 times the produce of the lands. It appears that the principal sudder ameen has overlooked a material point in his investigation of the merits of this case, viz., that defendant has asserted his own possession upon the property. Plaintiff indeed pleaded that the deputy magistrate's order was not carried into effect, and consequently she, and not defendant, is in possession. No proof of possession was taken from either party, and without deciding that point, the dispute cannot be set at rest, because, if the defendant is still in possession by virtue of the decision under Act IV. of 1840, which plaintiff sues to have cancelled, the mere declaration of the decree of the principal sudder ameen, that the lease and the decision are null, will not enable the plaintiff, in case of refusal by the defendant to deliver possession to her, to recover possession. This anomaly would result, that the principal sudder ameen could not eject a party, declared by his own decree to be in wrongful possession, and his decision would remain a nullity. In the second place, a suit to annul or reverse a magistrate's decision, is at least without object, if it be cognizable by the Regulations, because the matter of

the magistrate's decision is merely the point of possession, and its object to maintain one of the disputing parties in possession, till he be ousted by due course of law; in other words, till, on determination of the question of right, a decree for possession be passed in favor of another party. If the defendant be still in possession, and determined to retain possession, notwithstanding the annulment of the decision under the Act, I do not see how that annulment would benefit the plaintiff.

The appeal must be decreed, and the case sent back to the principal sudder ameen, to be re-tried after enquiry into the point of possession, and with reference to the above remarks.

THE 19TH FEBRUARY 1849.

No. 36.

Appeal from a decision passed by Mr. E. Da Costa, Principal Sudder Ameen, on the 17th August 1847.

Ahmud Hosein, (Plaintiff,) Appellant,

versus

Mozuffur Hossein, (Defendant,) Respondent.

THIS, as stated in the decision, is a claim preferred by plaintiff for possession of certain shops, &c., appertaining to a mosque in the city of Patna, on the ground of his having previously been mootuwulee, under a towleeutnamah, dated 19th December 1824, which he obtained from the heirs of the former mootuwalee, on a consideration of rupees 1,600, and of his having been dispossessed by the defendant in Maugh 1251 F. S. The principal sudder ameen considering the real object of the plaintiff to be, to get restored to the office of superintendent of the mosque, and the authority under which he sued to be illegal, inasmuch as it conveys the property to the plaintiff, in lieu of a consideration in contravention of Mahomedan law and the regulations, and finding it proved that the mosque to which plaintiff originally belonged, had been destroyed and ruined, that the mosque and property in litigation had been built anew by public subscription, and that the defendant had been installed as mootuwalee of the new mosque by the public voice, and been in undisturbed possession of his office for a period of nine years, dismissed the suit with costs.

The chief pleas of the appellant are, that the principal sudder ameen should have taken a futwa from the law officer before he decided that the towleeutnamah was illegal, and that in point of fact it does not convey the "wukf" property to him for a consideration: the facts being that the former mootuwulee and his heirs had both borrowed money for the purposes of the mosque, on the security of the property attached to it, and that the plaintiff merely paid off these loans, amounting to rupees 1,600, mentioned in the deed:

that the mosque fell to ruin owing to a new road having been run through the shops, the greater part of which were destroyed, and afterwards partially rebuilt by plaintiff: that the present mosque was rebuilt on the foundation, and with the materials of the old, and that the witnesses of respondent, who declare that it was rebuilt by public subscription, are not to be believed.

It appears by the ruin and disuse of the mosque and its being rebuilt by public subscription, that the towleeutnamah pleaded by plaintiff was as much in effect a deed of conveyance of the property for a consideration, as if it had been called so, and its object as well as its effect was to divert the property from the use for which it was originally intended. But even supposing the plaintiff to have been put in possession of the office of superintendent by a valid deed of appointment, it would be impossible, after plaintiff has allowed the mosque to fall to ruin by his misappropriation of the funds destined to its support, to give him a decree, to enable him again to divert the funds of the endowment from their object and allow a second mosque built by other funds to fall to decay in the same manner as the first, after a new superintendent, appointed by the restorers and rebuilders of the present one, has been in quiet possession and administration of the funds for nine years. The principle on which this opinion is founded is that according to Regulation X. of 1810, endowments must be appropriated to their object, to declare which a futwa is not needed. Under these circumstances I consider the decision perfectly just and proper and hereby confirm it; dismissing the appeal without calling on the respondent to reply. I observe that the principal sudder ameen need not have proceeded to the trial of this suit on its merits, but might have nonsuited the plaintiff; first, because he does not describe the boundaries of, he does not even claim, the land on which the shops stand; secondly, though the ground of his claim to possession of the property is his right to the office of superintendent, he does not claim restoration of the said office.

THE 24TH FEBRUARY 1849.

No. 43.

Appeal from a decision of the Principal Sudder Ameen, Mr. E. Da Costa, passed on the 16*th September* 1847.

Luchmun Narayen, (Plaintiff,) Appellant,

versus

Elahee Buksh and others, (Defendants,) Respondents.

SUIT to obtain re-payment of an advance secured by a farming ease, laid at 740-4-0, including interest.

The grounds of this action are, that defendants appointed a sazawul and attached the farm from the beginning of 1243 F., before the expiration of the term, and, neglecting to pay the Government revenue of the estate farmed, caused its sale. Elahee Buksh, defendant, admitted his liability to the extent of one-third of the demand. The other defendants answered by denying the fact of the appointment of a suzawul to attach and collect the rents, and urge that plaintiff himself caused the sale of the estate, and that the loan has been repaid, inasmuch as plaintiff is a defaulter of the farm-rent to an amount exceeding the amount of the said loan.

The principal sudder ameen, finding the attachment and the entire payment of the rent of the farm, alleged in rejoinder by the plaintiff, not proved, gave judgment in favor of the defendants Kureem Buksh, Beebee Ruhmun, and her representatives, to whom rent equivalent to more than two-thirds of the advance appeared to be due by the debtor and creditor account, decreed one-third of the claim only against Elahee Buksh.

The grounds of the appeal are insufficient to warrant interference with this decision, which appears to me, on a perusal of the record, to be just and proper. For first, appellant urges that the report of the ameen, deputed to make a local enquiry into the fact of the attachment, fully confirms his plea. That plea was that the attachment was effected from the beginning of 1243 F., whereas the proofs collected by the ameen tend to shew that it took place only in the month of Maugh of that year, *vide* the copy of the sunud delivered to the ameen by Oomrao Singh, dated 5th Maugh 1243. The original sunud of appointment was not produced. Oomrao Singh, stating himself to have been the person appointed by defendants to attach the rents, first declined to allow his evidence to be recorded by the ameen, and when, on the reference of the latter, he was ordered again to summon Oomrao Singh, and take his deposition, Oomrao Singh would not and did not sign it, when taken. Secondly, appellant pleads that the sudder ameen, in whose court the suit was instituted, did not call on him, in the roobakaree setting forth the points to be proved, for evidence to the payment by him of the rent of 1251 and 1252, but only to the payment of the rents from Asin to Aughun 1253. This is not strictly true, for, besides calling on him to prove this point, the sudder ameen did record this other point to be proved by him, viz. that the loan remained unpaid; and defendants having asserted that it had been paid off, inasmuch as there was a set-off of equal amount in arrears of rent due, that must be considered a sufficient warning to plaintiff to be ready with his proofs of the payment of the rent in the years previous to 1253. Further than this, in a second proceeding, recorded by the same officer on the 24th February 1847, plaintiff was distinctly admonished of the necessity of proving such payment. Without therefore serving any notice upon the respondent, I confirm the decision, and dismiss the appeal.

THE 24TH FEBRUARY 1849.

No. 44.

Appeal from a decision of the Principal Sudder Ameen, Mr. E. DaCosta, passed on the 23rd September 1847.

Kunhya Lall and others, (Plaintiffs,) Appellants,

versus

Meer Usgur Alli, (Defendant,) Respondent.

SUIT laid at rupees 409-6-4, arrears of rent for 1238 to 1240 F., both years inclusive, according to an account signed by the defendant at the end of 1241 F.

The principal sudder ameen gave judgment, dismissing the claim on the following grounds. "In my opinion the plaintiffs have failed to establish their claim. The wasil-bakee, on which it is founded, has not been proved. The plaintiffs state that it was made in the end of 1241 F., with Beharee Sahoo, during his life time, whereas their witnesses, Jaga, Ram Kurn, Khodabuksh and Dhoopun, depose that it was made in Kartick 1242 F., between Seetaram, plaintiff's father, and the defendant, after Beharee Sahoo's death, while the year 1241 F. is inserted in the wasil-bakee account without any specification of the month or date. The testimony of the witnesses is thus clearly at variance with the plaintiff's statement, and is therefore unworthy of credit. Besides, the claim to rent from 1238 to 1240 F., without reference to the account, is evidently barred by the rules of limitation."

Appellants contend that the want of agreement between these statements and those of the witnesses on the points in question is of no consequence, and quotes the report of a case decided in the Sudder Dewanny Adawlut, on the 17th February 1831, No. 32, at page 87 of the 5th volume, Abool Hussun *versus* Haji Mohomud Masih Kurbalai, which is evidently not a case in point, for there was no such discrepancy in that case as in this between the material points to be established and those deposed to by the witnesses. The appellant urges truly enough, that if the wasil-bakee account be deemed to be proved, his claim is not barred by the statute of limitations; neither does this appear to be the meaning of what the principal sudder ameen has recorded on this subject. Seeing no ground to interfere with the decision, I confirm it without calling on respondent to reply, and dismiss the appeal.

THE 26TH FEBRUARY 1849.

No. 40.

Appeal from the decision of the Principal Sudder Ameen, Mr. E. DaCosta, passed on the 25th August 1847.

Rewut Sahoo, (Plaintiff,) Appellant,

versus

Furzund Alli and Musst. Buharun, (Defendants,) Respondents.

SUIT laid at rupees 3,756-10-9, for the amount of a loan, principal and interest, secured by a farming lease.

The ground of the action, as stated in the decision, is that the defendants dispossessed plaintiff from the farm from Phalgoon 1252 F., though rent was paid to Furzund Alli, and plaintiff holds his wasil-bakee account and two receipts. Defendant Buharun, in answer, stating that she had purchased the estate from the other defendant, acknowledges the receipt of only rupees 172-12-0, in the year 1251 F., and in consequence of the default of plaintiff, she asserts, she collected the rents from Maugh 1252, as she was authorized to do by the terms of the lease, through a suzawul. The other defendant admitted the transfer by sale to her.

The judgment of the principal sudder ameen, decreeing only a part of the claim, is founded chiefly on his discrediting the genuineness of the wasil-bakee and receipts, and the testimony of plaintiff's witnesses. "The seals," he observes, "bearing the defendant Furzund Alli's name affixed to the documents, do not correspond with that upon the vakalutnamah and other papers. Besides Chuttoordharee Lal, who is stated by plaintiff's witnesses to have written the wasil-bakee account, denies all knowledge of it, and it is moreover, contrary to the usage of the country, attested by two witnesses, whose evidence even is very unsatisfactory and inconclusive."

The reasons urged against the decision, in the appeal, are either insufficient or unfounded upon evidence of any kind. Appellant first urges that the wasil-bakee account, if it had been compared with one of the previous year admitted by defendant to be in the handwriting of Chuttoordharee, would be found to correspond with it as to the handwriting. No such document, however, for 1250 F., is found on the record. Secondly, it is said that Furzund Alli's seal attached to a tumussook, upon which a decree was passed in the case of Teekaram, plaintiff, against him, corresponds with the seals in this case, but neither was evidence of this alleged fact adduced in the lower court. Thirdly, though appellant denies the fact of the appointment of a suzawul, yet he contends either that in the lower court he should have been charged rent for 1252 only, up to the date of the alleged appointment, or that further evidence should have been taken as to what sums were collected, when and by whom, during the period of the alleged employment of the suzawul, particularly as the suzawul's accounts are not attested by his farm agents and servants. I find that in the decision he is charged very properly with the rent due for the period up to which he himself, in another court, had previously admitted his possession to have continued, without reference to the attachment, further than by giving him credit for the sums appearing, on the evidence of the attaching officers and the accounts attested and authenticated by them, to have been collected by them, deducting expenses of collection. The objection as to the non-attestation of these accounts by the plaintiff's servants, is, I think, inadmissible, inasmuch as it was evidently out of the defendants' power to compel the plaintiff's servants to attest even

genuine and *bonâ fide* accounts. After perusing the record the decision of the lower court appears to me equitable, and there is no ground in the appeal on which it can be disturbed. I therefore confirm it, and dismiss the appeal, without calling on the respondent to answer.

THE 26TH FEBRUARY 1849.

No. 42.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 25th August 1847.

Teekaram, (Plaintiff,) Appellant,

versus

Furzund Alli and Musst. Beeharun, (Defendants,) Respondents.

THIS suit, laid at rupees 525-12-8, for the annulment of a sale alleged to be collusive and pretended with a view to defeat execution of plaintiff's decree against Furzund Alli, was dismissed on the ground of proof of the sale being *bonâ fide* and previous to the decree, and of the possession of the purchaser from the date of it. The appellant objects to the decision as to the sufficiency of the proof offered by defendant Beeharun, and asserts that on the contrary it is proved, by the facts of a butwara of the estate, of which the disputed property forms a part, having been made in the presence of the defendant, Furzund Alli, and of the purchase of the stamp on which the deed of sale is engrossed, that the sale did not take place at the time when the deed is dated, and that no real transfer of the property took place. No proof of these facts abovementioned appears to have been offered in the lower court, and on reference to the record I do not find that plaintiff has adduced, besides the presumptions afforded by the relationship between the buyer and seller, viz. that of daughter and parent, and the nonregistry of the deed of sale, any better proof of his assertions than what is found in the testimony of hearsay witnesses. Considering him therefore to have failed in making good his case in the lower court, I dismiss the appeal, and affirm the decision without calling on the respondents to appear.

THE 26TH FEBRUARY 1849.

No. 45.

Appeal from a decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 20th September 1847.

Jewun Lal, (Plaintiff,) Appellant,

versus

Newazee Lal, (Defendant,) Respondent.

SUIT laid at rupees 95-0-0, to establish the fact of the payment by the plaintiff of the sum of rupees 95, out of a joint payment by himself and the defendant into the collector's treasury.

The defendant denies the justice of the claim, and brings witnesses, who depose that the payment in question, amounting to rupees 105, was made by general subscription among several shareholders (including the parties to this suit) of an estate, to save it from sale for an arrear amounting to the above-mentioned sum, and that Suddoo Lal, brother of the plaintiff, paid only rupees 5 of the subscription. The witnesses, except Cheit Singh, are the subscribers themselves, but he is the mokhtyar of one of them, named Huree Singh, and says he was the person who made the assessment according to which the money was clubbed. The plaintiff also called witnesses, who supported his statement.

The principal sudder ameen dismissed the claim on the following grounds.

"The plaintiff has failed to establish his claim. The witnesses adduced by both parties have given evidence in behalf of the party at whose instance they had been summoned, and I certainly see no reason to give credit to the testimony of the plaintiff's witnesses in preference to that of the defendant's. Consequently, and in the absence of all documentary proofs, I do not feel warranted in passing a decree in favor of plaintiff."

In the appeal it is contended that the testimony of defendant's witnesses is so contradictory as to be unworthy of credit. This assertion I do not find to be borne out by the papers of the record, although certainly the witnesses do not agree in every particular. For instance, Huree Singh said that Suddoo Lal, (through whom plaintiff alleges the rupees 95 to have been paid) contributed rupees 10, while Cheit Singh, the mookhtyar, says he assessed him at rupees 10, but he consented to, and did pay only rupees 5. Another witness also says he paid only rupees 5. Cheit Singh deposes that he, on the refusal of Suddoo Lal, to pay more than rupees 5, sent to Rugnee Bhugut, and obtained from him by his messenger that sum. The witness, Huree Singh had said that Rugnee Bhugut paid rupees 5 to Newazee Lal defendant. This witness, however, was not questioned as to whether this payment was made personally, or through a messenger. Now, on the other hand, I find that the vakeel of plaintiff was permitted to examine his witnesses by leading questions suggestive of the answer desired in every particular. Testimony so obtained is inadmissible, and cannot be permitted to prevail over that brought forward by the defendant, who, moreover, produced the dakhila obtained from the collectorate. The possession of this document by him is a presumption against the truth of plaintiff's assertion, that more than 9-10ths of the payment was contributed by him; and I therefore, on this and every other account, dismiss the appeal, and confirm the decision, without having called on the respondent to reply.

THE 27TH FEBRUARY 1849.

No. 46.

Appeal from a decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 10*th September* 1847.

Musst. Suffeea Begum, (Plaintiff,) Appellant,

versus

Lootfoonnissa Begum and others, (Defendants,) Respondents.

THIS suit was instituted to recover possession upon 2-16ths of the one-third share of certain rent-free lands, in mouzah Bhuthur Ghosbux, pergunnah Pilich, with wasilat at rupees 48 *per annum*, from 1239 F. inclusive. The principal sudder ameen having awarded, in his decree for possession upon the lands, wasilat only from 1242 F., at one-half the rate claimed, this appeal is preferred to obtain the remainder of the sum sued for, viz. rupees 432. There appears to be two reasons for this part of the decision: first, that it is illegal under the statute of limitations, to decree appropriated proceeds unclaimed for twelve years and upwards; secondly, that as it appeared by the plaint that plaintiff received a fixed annual sum under a mokurruree, as compensation for her right, both in the estate sued for and in another property formerly the jageer of Kuleean Singh, it was proper to award only a part (half) of the mokurruree jumma as wasilat. The grounds, however, on which one-half of that sum is considered the proper proportion are not stated in the decree. The appellant urges that the real proceeds amounted to much more than rupees 48, and as the defendants nowhere urged that they were over-stated at that sum, the whole ought to have been awarded. She objects also to the applicability of the statute of limitations.

The principal sudder ameen has neglected to notice, in the grounds of his decree, that a suit for arrears of the mokurruree jumma instituted by the appellant, had been pending in the court, and being nonsuited, or dismissed with leave to bring another action in a different form, the present suit was the consequence. According to the decision of the Sudder Dewanny Adawlut, reported in the 7th volume of the Select Reports of that Court, page 375, the decision is contrary to precedent in not deducting the time during which the nonsuited case was pending. As it is, moreover, incomplete, in regard to the non-assignment of grounds at length for assuming the annual proceeds at rupees 24 *per annum*, I decree for appellant, and direct that the case be remanded to the lower court for re-trial on the two points above-mentioned. The principal sudder ameen will amend his decree, in regard to the period from which wasilat is to be allowed with advertence to the precedents of the Sudder Dewanny Adawlut, and record his reasons at length for fixing the

annual amount at rupees 24, taking evidence, if necessary, on the point last mentioned. The value of the stamp of this appeal will be refunded to appellant.

THE 27TH FEBRUARY 1849.

No. 47.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 10*th September* 1847.

Musst. Valaitee Begum, (Plaintiff,) Appellant,

versus

Musst. Lootfoonnissa and others, (Defendants,) Respondents.

THIS suit was instituted for the recovery of possession with mesne profits, at the same annual amount, upon an equal share of the same property, for the same period of dispossession, as in appeal No. 46, decided this day. The only difference in the pleadings is, that the plaintiff in this case states the receipt of an annual sum of rupees 36, instead of rupees 48, as in that case, in recognition of her rights. The decree, however, awards the same annual amount on the same grounds as in the other case, and the appeal is preferred on the same grounds, and for the same amount, viz. rupees 432. The same orders are therefore passed as in that case.

ZILLAH PURNEAH.

PRESENT: D. PRINGLE, ESQ., JUDGE.

THE 2ND FEBRUARY 1849.

Appeal No. 27 of 1848.

Sudder Ameen, Mr. Noney.

Sheikh Mahomed Ali, (Defendant,) Appellant,

versus

Bhola Haree, (Plaintiff,) Respondent.

Seetul Chund and Bamachurn—Vakeels for Appellant.

Gobind Chund and Brij Lal—Vakeels for Respondent.

AN action of damages, *in formâ pauperis,* for illegal attachment and sale of pigs, the property of respondent; laid at rupees 716. The plaint setting forth, that appellant, under Regulation V. of 1812, having attached the property of certain ryuts, the said pigs belonging to respondent were so included and sold. Appellant pleading not guilty; the pigs being those of the defaulting parties. The sudder ameen coming to the following decision, that the plaintiff claimed value for 84 old pigs and 117 sucking ditto, with that of the forthcoming breed, which he deems unreasonable; but awards three times the value of 80 pigs, sold for rupees 44, 4 annas, by the attaching officer, with rupees 29-4 for sucking ditto, there being no doubt of these having belonged to the plaintiff, respondent here.

In appeal, this is denied, as before, and the evidence thereto impugned.

JUDGMENT.

The respondent is found to be a breeder of pigs for the Calcutta market; the parties, for whose arrears the attachment issued, having originally been partners with him in the same trade. Considering it by no means so clear, as the sudder ameen states, that the stock thus disposed of belonged exclusively to the respondent, I instituted successive enquiries, through the attaching officer and local ameen, if possible, to ascertain this; the result furnishing strong presumption that the defaulting parties at the time had some interest, though small, in the pigs thus indiscriminately sold for balance due by them. Under which circumstances I affirm the decree, but with abatement of one-third in the damages awarded. The costs to follow this award.

THE 12TH FEBRUARY 1849.

Appeal No. 250 of 1848.

Moonsiff of Doolalgunge, Furzund Ali.

Toofanee Das, (Defendant,) Appellant,

versus

Musst. Emernee, (Plaintiff,) Respondent.

Gobind Chund—Vakeel for Appellant.

Muneerooddeen—Vakeel for Respondent.

ACTION of damages, for illegal distress, laid at rupees 14. The respondent brought this action to recover damages, because of the illegal sale of two cows, for alleged balance of rent, by appellant; who replied that respondent is a widow, supported by a grandson, Kureem, against whom the writ issued, because of rupees 4-6-4 due for 1255, and whose cows were sold accordingly, for rupees 4-10-8, on application of the surburakar.

The moonsiff finds that the said Kureem is a minor, and that no lands are entered either in his name or that of respondent; while the forcible appropriation of the cattle, which were worth 13 rupees, is not denied; Kureem being moreover summoned, to ascertain his age, which all present declared not to exceed 10 or 11 years, on which grounds the claim is decreed.

In appeal, it is urged that Kureem is of age, and liable as before said.

JUDGMENT.

The parties being summoned for disposal of this objection, his age was found not to exceed 14 years; and though the appellant's vakeel raises a doubt as to the identity of the party so appearing, yet he adds that, though requested to attend and identify him, his client had failed to do so. The appeal was therefore dismissed.

THE 20TH FEBRUARY 1849.

Appeal No. 332 of 1848.

Moonsiff of Kishengunge, Mr. Boilard.

Soobratee, (Defendant,) Appellant,

versus

Subooree, (Plaintiff,) Respondent.

Afzul Ali—Vakeel for Appellant.

Gobind Chund—Vakeel for Respondent.

CLAIM, for rupees 96-13-11, value of articles taken in account from respondent. The parties here are dealers in grain, &c., who, it appears, were summoned to attend with the usual articles of consumption, on the march of an European detachment, through Titalyah,

to the hills. The appellant, running short, had to borrow of respondent, whose book he has duly signed for that so taken by him. He now denies his signature, and farther pleads that he had deposited rupees 60 in respondent's hands, but in support of which he can produce no voucher or proof; he farther objects to the case being decided at Kishengunge, as the transactions took place beyond the boundary, and in the Rungpore district.

The moonsiff finds the objections throughout without foundation; and as to the jurisdiction, seeing both parties lived in Kishengunge, they were undoubtedly liable to be sued therein.

JUDGMENT.

I agree with the moonsiff, in considering this a gross attempt to evade payment of a just debt, to support which the evidence, oral and documentary, is conclusive.

THE 28TH FEBRUARY 1849.

Appeal No. 11 of 1847.

Additional Principal Sudder Ameen, Mr. Noney.

Dowlut Chowdhry and others, (Defendants,) Appellants,

versus

Kuneiah Lal, (Plaintiff,) Respondent.

Seetul Chund Rae and Muneeroodddeen—Vakeels for Appellants.

Brij Lal Singh and Gobind Chund—Vakeels for Respondent.

ACTION laid at rupees 1,252-11-6, for produce of land forcibly appropriated by the appellants. Of the plaintiffs below, the respondent, Kuneiah Lal, holds a pottah of Mrs. G. Buckland, from 1248 to 1251, of certain reclaimed *jungleboorec* lands, at a rent subject to ratable increase; who, in 1250 and 1251, it is alleged, had cultivated 31 beegahs, the crop on which being forcibly cut and removed by the appellants, he lodged a summary suit before the magistrate, under Act IV. of 1840, when possession was awarded to the lessor of whom he holds, which award remains undisturbed.

The appellants, admitting this, aver that respondent had cultivated without the bounds of the jungleboorec tract, and thus encroached on their lands adjoining; whose estimate of the produce, it is moreover urged, is greatly beyond the truth.

The additional principal sudder ameen, proceeding on the award of the magistrate, after local enquiry to ascertain the value of crops, adjudges two-thirds of the amount claimed by respondents, or rupees 1,282-11-6½.

In appeal, the former argument is revived; while the amount so decreed, after abatement, it is contended, is excessive; the ameen's return being impugned, because of partiality in receiving evidence while conducting the enquiry.

JUDGMENT.

The simple question for determination here, is the amount of damages to which the respondent is entitled, no suit being brought to set aside the summary award maintaining his occupancy. The sum fixed by the additional principal sudder ameen, appears, on consideration of the appellants' objections, excessive; while those raised to the local enquiry, I consider, likewise, to have foundation. An officer of standing was therefore deputed from this court, with concurrence of both parties, to review this estimate, from whose return it is found that only 22 beegahs can be ascertained to have been in cultivation throughout this period; the produce of which, for two years, is thus valued at rupees 853-2-4. To which extent, therefore, the decree in favor of respondent is modified. The costs to follow the award.

THE 28TH FEBRUARY 1849.

Appeal No. 12 of 1847.

Additional Principal Sudder Ameen, Mr. Noney.

Dowlut Chowdhry and others, (Defendants,) Appellants,

versus

Mrs. G. Buckland, (Plaintiff,) Respondent.

Seetul Chund and Muneeroodldeen, Vakeels for Appellants.

Brij Lal Sing and Gobind Chund, Vakeels for Respondent.

ACTION of damages, for trespass of cattle and seizure of crop, laid at rupees 1,089-10-8. The respondent, plaintiff below, states that on expiration of the lease, held by the respondent in the preceding number, she took the lands into her own cultivation, in addition to 95 beegahs sown with kissaree, in the same tract, of which she holds a lease from the Rajah of Durbungah; the 30 beegahs, as above, being sown with paddy, of which last the appellant had in like manner forcibly possessed himself; while he had grazed the former with his cattle. The appellant, as before, pleading not guilty.

The additional principal sudder ameen finds the trespass duly proved by the witnesses examined; while the appellant, though a subpœna was twice granted, had failed to produce any evidence to the contrary; and the damage, as laid by the respondent, thus established; but considering the estimate excessive, reduces the amount one-third.

In appeal, it is contended that it was imperative on the lower court to depute an ameen, to hold a local investigation, for which reason the appellant had then declined to produce his witnesses.

JUDGMENT.

The boundary of the jungleboorce tract was determined by the summary enquiry under Act IV. of 1840 before the magistrate; which, as already stated, not having been set aside, there was no

room for objection on this ground; the only question being the extent of damage arising from the trespass. To rebut the evidence in support of this, the appellant insisted upon a local enquiry, and declined to bring forward his witnesses. It was not for the appellant to dictate to the court in such matter; who might, had it seen fit, eventually have granted his application. The futility of this objection, however, is conclusively shewn, by the omission of the appellant to bring it forward, when an officer from this court was deputed to proceed to this very spot, in the preceding case; an occasion of which he would doubtless avail himself, had such been his real object, for determination of the points at issue. The reduction in the assessment of damages was, moreover, to be considered gratuitous, on the part of the lower court, as no evidence whatever was there brought by the appellant to prove this excessive.

The appeal is therefore dismissed, the award there made being affirmed.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 3RD FEBRUARY 1849.
No. 78 of 1847.

Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shahzadpore, dated the 20*th May* 1847.

Jhurroo Paramanik, Mungul Paramanik, Madaree Nussoo, Bhadoo Mundul, Molamdee Paramanik, and Dookhye Paramanik, (Plaintiffs,) Appellants,

versus

Lukheekaunth Roy, Furkhunda Beebee, and Yar Mahomed Sirkar, (Defendants,) Respondents.

Luteefun Beebee and Syudanee Rohman Beebee, Claimants.

THIS suit was instituted by the appellants, on the 27th January 1846, to set aside a sale of their property by the mofussil commissioner under the deputy collector of Pubna, to realize rupees 228, 1 anna, 10 pies, for an arrear of rent alleged to be due to Kasheekaunth Roy, the son of Lukheekaunth, under a kubooleeut. The property was sold on the 24th Bhadoon 1252 B. S., corresponding with the 8th September 1845, and the sale realized rupees 52, 10 annas, 3 pies.

The moonsiff, holding it proved, that the plaintiffs (appellants) had given the kubooleeut, and that the amount (rupees 228, 1 anna, 10 pies) for which the property had been distrained and sold, was due thereon, under the precedent of the case of Dwarkanauth Tagore *versus* Dhanoo Kulloo, (page 65 of the Sudder Decisions for 1847,) dismissed the suit, affirming thereby the sale.

Against this decision the appellants appeal, pleading, *inter alia*, that they never gave any kubooleeut to Kasheekaunth, nor were they in possession of any lands set forth in the kubooleeut; that they were ryuts of Luteefun Beebee, the claimant, and had nothing whatever to do with Kasheekaunth. Lukheekaunth, in his answer, stated that he had taken the lands of Furkhunda Beebee and Furman Ali, in the name of his son Kasheekaunth. But it would appear the distraint was made by Yar Mahomed, under a sunud given to him by Kasheekaunth, in his *own* name. The kubooleeut is also given to the said Kasheekaunth, and the parties thereto stipulate to pay *jointly*, for three years, rupees 274 10 annas *per annum*, for the lands set forth in it to Kasheekaunth. And as a kubooleeut is the counterpart of the *pottah*, the *pottah* must have been granted by Kasheekaunth. Now the question arises if Kasheekaunth, who was a minor *then*, and is so *still*, could be a party to such a lease, or grant a sunud to distrain the property of others for alleged arrears? To me it appears quite

preposterous; and more, it would seem a *gomashtah* on his (Kasheekaunt's) part subsequently complained to the joint magistrate of Bogra, that Luteefun Beebee was seizing his ryuts, and taking rent from them, and therefore prayed to have the case brought under Act IV. of 1840. On this the petitioner was directed to file a list of his witnesses, but failing to do so, the case was dismissed in default on the 3rd February 1848. As in this case there is no proof of possession of the lands, by either Kasheekaunth or Lukheekaunth, who represent themselves as being istumrardars (tenants in possession under a fixed jumma) under Furkhunda Beebee and Furman Khan, and none that the appellants were ryuts of the former or in possession, I do not see what analogy this case can have to Dhanoo Kulloo's. In that case Dhanoo admitted being in possession of the lands, but denied giving a kubooleeut to Dwarkanauth Tagore, who had sued him for rent before the deputy collector. It is quite clear that, when the property was distrained and sold, and also subsequent to the moonsiff's decision, the possession of the land for which the respondents claimed rent, was disputed; and that the sale of the property was made at the instance of a party (Yar Mahomed) acting under a sunud given to him by a minor, the sale was in consequence *ab initio* illegal. The appeal is therefore decreed, and the moonsiff's decision, as well as the sale, reversed. The appellants will receive the amount their property sold for, from the respondents, Lukheekaunth and Yar Mahomed, together with interest from the date of sale, and all their costs. The other respondent, Furkhunda Beebee, to pay her own costs.

THE 7TH FEBRUARY 1849.

No. 145 of 1847.

Appeal from the decision of Sreenauth Bidyabagish, Moonsiff of Bograh, dated the 28th of August 1847.

A, Kookun Chunder Sandeal, and B, Ramkanye Muzmodar, (Defendants,) Appellants,

versus

Bhowanny Sunkur Panday, (Plaintiff,) Respondent.

Pran Beebee and Unoop Beebee, Claimants.

THIS suit was instituted on 5th August 1846, by the respondent, to recover from the appellants rupees 64-9-7¼, alleged to be the balance due on account of the rent of a farm for the years 1251 and 1252 B. S.; A, being the farmer, and B, his security.

A, in his answer to the plaint, admitted taking the farm from the plaintiff, but that he was not the real proprietor. The estate belonged to Unoop Beebee and Pran Beebee, who, being pressed by their creditors, had sold it, benamee, to the plaintiff, and who, on their account, but in his own name, had farmed it to A. That among other conditions of the lease, the defendant was to pay the Government revenue, and also one thousand rupees in the year 1251, and

again in 1252, B. S., in liquidation of a bond, given by the plaintiff, on behalf of the Beebees aforesaid, to Sheeb Narrain Moonshee and Kishen Chunder Muzmodar, who had lent them (the Beebees) two thousand rupees; that he had accordingly paid the Government revenue, for which he had received dakhillas of the collector, and the endorsement on the bond would shew he had, according to the conditions of the lease, satisfied the same, and there was no arrear due on account of 1251 and 1252 B. S. He also added he had taken the farm for four years.

The moonsiff, on the admission of A, that he had given the plaintiff a kubooleeut, on the precedent of the case of Dwarkanauth Tagore *versus* Dhanoo Kulloo, (page 65 of the Sudder Dewanny Decisions for 1847,) that all he was to decide was, if a kubooleeut had been given and a balance was due thereon, gave the plaintiff a decree for the amount claimed. The moonsiff also ruled that, from a summary decision of the deputy collector of Bogra and a *kyfeut* of the ryuts, it was established the plaintiff was in possession.

Against this decision the appellants have appealed, and Unoop Beebee and Pran Beebee (who before intervened) have again put in their claim. Both insist that the respondent was not the proprietor, that the sale to him of the estate was a *benamee* one, and so was the lease to A. To ascertain if the suit was a fictitious one (with advertence to the Sudder Dewanny Adawlut's Circular Order of the 29th July 1809,) the appeal was admitted on the 5th May last, and with reference to a petition of the claimants, the joint magistrate of Bogra was requested, if there were disputes as to possession, to attach the same under Section 3, Act IV. of 1840, (this because the court could not, on a claim for an arrear of rent, order such an attachment.) On the 28th November last, the case was again taken up, and both the appellant and respondent were served with notices to attend personally to be examined. The respondent first appeared, and, in his examination taken on the 19th December 1848, (made on a solemn declaration,) stated that he purchased the estate of the Beebees for 5,000 rupees: that he was carrying on the business of a cloth merchant on his account, and had never been a *gomashtah* of the aforesaid Beebees, though he had occasionally acted for them in cases pending in the courts: that the title deeds of his purchase from the Beebees, he placed in an iron box, and had left it with Bhoolun Munnee (his wife,) who again, being apprehensive of fire, had placed it in the shop of Zalum Singh, (the husband of Pran Beebee:) that when Bhoolun Munnee asked for the box, Pran Beebee and Unoop Beebee refused to return it; a complaint in consequence was lodged in the foujdarry, and she was referred to the civil court. The respondent (on being further questioned) then repudiated all his vakeel had stated in a *woojoohat*, in another appeal before decided in this court, on the 6th February 1847, (page 1 of the Decisions of this court for 1847,) denied having given any petition to the joint

magistrate of Bogra on the 10th October 1844, and denied having purchased this very estate on account of Pran Beebee and Unoop Beebee, and that he had paid the purchase money for it. The appellant, having attended, was examined on the 1st February (instant,) and deposed to taking the farm of the Beebees, through the respondent, and giving a kubooleeut in his name; that he had paid the Government revenue of the estate, and also liquidated the bond given by the Beebees, in the respondent's name, to Kishen Chunder Muzmodar and Sheeb Narrain Moonshee, who had endorsed all payments made on the bond: that he had given to the Beebees an *ikrar*, or agreement, relating to the sale of the estate being *benamee*, and then pointed out the *dakhillas*, and bond as those he had received in payment of the rent of the farm, and which he had delivered to the Beebees.

The examinations will be given at length in the decree, and were taken on a solemn declaration, as it appeared absolutely necessary to have cleared up if the suit was fictitious or not, or if the transaction out of which the claim arose was or was not a *benamee* one. For if not a *bonâ fide* one, there was an end of it, and no action could lie.

The balance claimed is thus made out, or calculated in the plaint:

	Rs. As. Gs.	
Rent of the farm for the years 1251 and 1252 B. S., at, Rs. 1,645-6-18 *per annum*,	3,290 13 9½	
Deduct Government revenue for 2 years, at Rs. 613-2-1	1,226 4 2	
Deduct amount of the bond, ...	2,000 0 0	
		3,226 4 2
Balance, ...		64 9 7½

This balance the respondent claimed, and, in his plaint, stated that rupees 149, annas 4, pies 9, was to be paid on account of the bond in 1253 B. S., and the balance to the respondent. The accruing interest on the bond was to be paid in 1251 and 1252 B. S.

The amount paid by the appellant, as per *dakhillas* and endorsements on the back of the bond, is as follows:—

	Rs.	As.	P.
For Government revenue paid in 1251 and 1252 B. S., ...	1,158	12	5½
On account of the bond, with interest paid in 1252 and 1253, ...	2,407	9	0
Total,	3,566	5	5½
Deduct rent of the farm for 2 years (as above,)	3,290	13	9½
Excess paid,......	275	7	8

Now as no exception has been made to the sums paid on account of the bond, *including interest,* (the greater part was paid in 1253 B. S.,) the appellant has a right to claim the whole so paid as a set-off against his rent of the farm for 1251 and 1252 B. S., and in such case, no balance remaining, the claim is untenable; or if there was a condition that rupees 149, 4 annas, 9 pie were to be paid on account of the bond in 1243, how is this to be decided in the absence of the kubooleeut containing this condition?

The averment of the appellant A, appears to be the correct one, *i. e.*, that the whole transaction was *benamee,* entered into by the Beebees with the respondent, who, according to his *vakeel's* admission in a former appeal, (instituted by the respondent,) was a *gomashtah* of the Beebees, and had been dismissed by them. After this he complained against them for taking his title deeds (connected with this estate and farm) in the foujdarry, and was referred to the civil court. But instead of bringing his action for the recovery of the deeds, he has brought the present suit, and wishes the court to declare that the sale of the property to him by the Beebees was *bonâ fide,* when *primâ facie* it was just the reverse. How Dhanoo Kulloo's case can be called one *semble,* I cannot discover. To my humble comprehension, the Sudder Court, in that case, seem to have laid down that in trying a regular suit to reverse or have set aside a summary one of the collector's, adjudging rent to be due under a kubooleeut, the question to be decided by the court was, if the party sued had given the kubooleeut, and if there was a balance due thereon. Now, in the first place, this is not a suit to set aside a summary one, neither has any kubooleeut been filed or produced. The point at issue was, who was entitled to the rent of the farm, and if any arrear was due from the farm. The farmer pleads there was no arrear; and by his shewing there was none; while the parties holding the title deeds to the estate, and *dakhillas,* or receipts of rent paid in on account of the Government revenue, declare they have no claim against the farmer, and urge that the person who granted the farm was their servant, and could not sue for an arrear, if there was one; and with this fully borne out by the documents, and copies of petitions filed in the Bogra foujdarry court and in this, that the moonsiff should have given the respondent a decree, appears to me unaccountable, and is opposed to the facts and law applicable to the case. The respondent, in my opinion, having no title to the rents of the farm, and no balance being due on account of 1251 and 1252 B. S., the appeal is decreed, and the moonsiff's decision is reversed, and all costs, including those of the claimants, are made chargeable to the respondent.

I have entered perhaps more than was necessary into the case, and particularly as to the respondent's title, but on *this* decision of the moonsiff (in a great measure) the joint magistrate of Bogra has adjudged possession of the estate under Act IV. of 1840, to the

respondent, and in a proceeding, dated the 28th August last, the sessions judge of Rungpore (on the appeal of another farmer on the part of the Beebees) has recorded that the decision in *this* appeal will decide, who has a right to the estate. But on the issue to be tried in this appeal how can this be adjudicated? The claimants must first sue to set aside the summary order for possession passed by the joint magistrate of Bogra.*

* As the following correspondence, sent to me, appears to have a reference to this case, I think it advisable that it should appear as a note. I disclaim any wish to interfere with the joint magistrate's authority to award possession to any one under Act IV. of 1840; but in this instance, I think, it would have been better if he had attached the lands as suggested.

To the Register of the Court of Nizamut Adawlut, Calcutta.

Sir,—I have the honor to forward the accompanying original letter No. 107, of the 31st ultimo, from the joint magistrate of Bogra, and to request the opinion of the court as to the legality of the proceedings of the civil judge noticed by Mr. Yule.

I have, &c.,

(Signed) W. DAMPIER,
Superintendent of Police, L. P.

Garden Reach, the 9th June 1848.

To the Superintendent of Police, Garden Reach, Calcutta.

Sir,—I have the honor to request your opinion on the following point:

A case under Act IV. of 1840, for the possession of certain lands was in progress before me, while at the same time a regular suit for the right to these lands was before the civil court. That court directed me to stay proceedings in the summary until the regular suit was decided, equivalent in fact to directing me to strike the case off the file. I declined obeying this order, unless the civil court attached the lands so as to prevent affrays. In reply, I was directed to make the attachment myself under Section 3 of Act IV. This order not arriving until I had put one party in possession, the matter ended; but I wish to know, for my guidance in future, whether the civil courts have power or not to stay proceedings in a magistrate's courts in such a case, and to direct attachment of the subject of dispute.

I have, &c.,

(Signed) G. W. YULE, *Joint Magistrate.*

Bogra, 31st May, 1848.

To the Superintendent of Police.

Sir,—The Court, having had before them your letter No. 1283, of the 9th instant and its enclosure, direct me to inform you that the order of the civil court, directing the magistrate to stay proceedings held under Act IV. of 1840, was illegal, and must be withdrawn. Parties dissatisfied with the orders of the magistrate may appeal to the sessions judge, who is competent to suspend the magistrate's award. The enclosure of your letter is herewith returned.

I have, &c.,

(Signed) B. J. COLVIN, *Register.*

Fort William, the 23rd June 1848.

THE 12TH FEBRUARY 1849.

No. 49 of 1848.

Appeal from the decision of Moulvee Sadut Ullee, Moonsiff of Bauleah, dated the 30th March 1848.

Kalachand Ghose, (Defendant,) Appellant,

versus

Hunnooman Singh, (Plaintiff,) Respondent.

THE respondent instituted this suit to recover rupees 182, 6 annas, 5 pies, being principal, and an equal amount as interest, due on a bond for Sicca rupees 85, dated the 17th Aughun 1242 B. S., given to him, it was alleged, by the appellant. The moonsiff, on the evidence of two witnesses to the loan and execution of the bond, gave the respondent (plaintiff) a decree. The grounds of appeal, *inter alia*, are that a person by name Mohun Tewaree sued Mona Ghose, (a connection by marriage of appellant,) and, obtaining a decree, sued out execution and attached some cows belonging to the appellant, who complained in the foujdarry, when they were released; and now, through enmity, the respondent has brought the present suit, after the lapse of eleven years; and that the respondent would never have remained silent so long, had he any claim against him (appellant.) The appellant denied borrowing any money or executing any bond; and more that the respondent had not produced the person who wrote the bond. On being questioned, the respondent (who was in attendance) stated, the appellant had brought forward the person who drew out the bond, and who he was he (respondent) did not know. After reading the evidence on both sides, I see no reason for disturbing the moonsiff's decision. Though there was delay in suing, the suit was instituted within twelve years, and the loss of interest has, in consequence, fallen on the respondent. The appeal is therefore dismissed with costs.

THE 15TH FEBRUARY 1849.

No. 1 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 2nd December 1847.

Radhanauth Chowdhree, (Defendant,) Appellant,

versus

Doorga Maye Choudhrain, (Plaintiff,) Respondent.

THE respondent instituted this suit, on the 27th November 1845, to recover rupees 3,439-6-6½, which she alleged was due to her on account of mesne profits of a 4 annas share of *kismut* Choudrain Ray Kalli, from the month of Aughun 1244 to Chyte 1247 B. S., having been ejected by the appellant, and she did not get possession till a

butwarra of the estate was effected. The 4 annas share she had purchased of Sonatun Sirkar, who again had purchased it at a sale by the collector, who sold it to realize a balance of rent due from a farmer under the court of wards, and the share in question belonged to the appellant, who was security for the farmer. The appellant had also a claim to another 8 annas share of the estate, and when his claim was admitted in appeal by the Sudder Court, he, it was alleged, ejected the plaintiff from her 4 annas share. This the defendant (appellant) denied, in his answer, but the principal sudder ameen, considering the ejectment proved, on the report of an ameen deputed by *himself* to make a local investigation, gave the plaintiff a decree for rupees 1,139, 11 annas, 11½ pies, deducting what the respondent had herself collected from fourteen ryuts, what was due by ryuts who had died or absconded, also what had been paid on account of Government revenue; he also made the usual allowance, or a per centage on the amount collected, for expenses of collecting the rent. The decree was to carry interest from the date of suit, with costs against the appellant alone. Nothing is said about two other defendants, Kumlakaunth and Gooroopershad, or who is to pay their costs.

Against this decision the appellant appeals, and repeats what he stated, in his answer, that he had never ejected the respondent, who all along had been in possession: that she neglected to pay the Government revenue, and therefore he had paid it to save the estate. He also impugned the ameen's report, on which the mesne profits were decreed, accusing him of changing, or forging, some of the depositions taken in the mofussil.

The appeal was admitted on the 1st August last, and, on the 5th, the respondent filed an answer, containing a demurrer to the appeal as wrong laid, as what the principal sudder ameen had deducted on account of Government revenue was *de facto* collected from the *ryuts,* and therefore included in the amount (rupees 1,807, 11 annas, 9 pies,) specified in the decree as the *wassilat.* The appeal therefore should have been laid at this amount. This demurrer I overrule, as it is fully met by the decision of the Sudder Court in the case of Prankishen Goopt *versus* Rajkishore Deb, (page 347, Sudder Dewanny Adawlut Reports, Vol. VII.)

I now proceed to the proof of ejectment. This allegation is supported by the copies of petitions and reports made by the *butwarra* ameens, and two decisions of a late moonsiff of Bogra, both dated the 27th July 1839. In these suits the present appellant was plaintiff, and Doorga Maye, defendant, and the former sued to recover the amount of Government revenue paid on her account, at different times; but the moonsiff dismissed the suits, as the plaintiff had no authority to pay the revenue, and he (plaintiff) had dispossessed her, and more, the share of one shareholder, when a *butwarra* was being made, was not liable to sale on account of any balance due by another share-

holder. The moonsiff also rejected the evidence of three witnesses, brought forward by the plaintiff to prove that the defendant was *then* in possession. From one of these decisions there was an appeal, but it was struck off on default, and thus the moonsiff's decision became final, but after going through it, and reading the proof and evidence, I cannot concur with him that it was proved that the appellant had dispossessed the respondent. Subsequent to the sale of the 4 annas share, purchased by Sonatun Sircar, the appellant, under a decree of the Sudder, got possession of an 8 annas share of the same estate. The whole estate was then *ijmalee*, and no *butwarra* could take place, unless *all* the parties claiming a partition were in possession, and in the event of one shareholder keeping another out of possession, the revenue authorities, could, under Section 32, Regulation XIX. of 1814, summarily direct immediate possession to be given to such shareholder of a portion equal to the *jumma* payable by him or her. Now there is nothing on the record to shew or prove that the respondent, before the *butwarra* was completed, applied to the revenue authorities to maintain her in possession, or complained of being dispossessed. If she had, she certainly would not have been kept out of possesssion for more than three years (Aughun 1244 to Chyte 1247.) The whole case turns on the proof of dispossession, and in the case of a joint-tenant there must be proof of an *actual ousting*, or otherwise an action of ejectment and recovery of mesne profits cannot be maintained. It is true the appellant, in his reply, filed in the case before the moonsiff of Bogra stated he had Doorga Maye's *verbal* orders to look after her business in the mofussil and sudder station, and if by this it was intended he should collect rent from the ryuts for her share, she might claim an account of what had been collected and expended, and, if not given, sue him for one, but nothing more. But it is impossible with what is on the record to come to any just decision. The principal sudder ameen has jumped to the conclusion, that she was dispossessed, merely on the production of copies of petitions taken from the *nuthee* connected with the *butwarra*, and the decision or *dictum* of the moonsiff in the cases dismissed by him, in which the defendant in *this* case was plaintiff. He should have first called for the sale papers, and seen what steps Sonatun Sircar, or the respondent, took to get possession of what the former had purchased of the collector. He should also have examined the *nuthee*, or papers, in the *butwarra* case, to ascertain if the respondent had ever complained to the collector of being dispossessed by the appellant, and if so, what orders had been passed by him, or the commissioner, if the collector did not see her righted. If she made no complaint, then her *laches* will throw great suspicion on her present one of ejectment and for mesne profits for the period she was out of possession. It is nowhere stated who was her naib, or who was put in possession for her. No reason has been given for making Kumlakaunth and Gooroopershad defendants,

and there is nothing in the decree to shew why they have been exempted from liability, and, if wrongly sued, why they are to pay their own costs. The case must therefore be sent back to the principal sudder ameen for re-investigation, to proceed as above indicated, and also to enter on the pleas relating to malversation on the part of the ameen appointed to report on the wassilat. The value of the stamp on which the petition of appeal is written, to be returned to the appellant, and the usual order as regards costs.

THE 16TH FEBRUARY 1849.

No. 2 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 4th December 1847.

Kumlakaunt Sircar, (Plaintiff,) Appellant,

versus

Doorga Maye Chowdrain, and Tara Munnee Chowdrain, (Defendants,) Respondents.

THE appellant sued to recover rupees 325-8, on account of Government revenue paid for the respondents, and also for the salary of *butwarra ameens*, together with interest. The principal sudder ameen dismissed the suit, as it was established in another case (see the one decided yesterday) that Radhanauth Chowdhree had been in possession of Doorga Maye's share of the estate, from Aughun 1244 to Chyte 1247 B. S., and had been made liable for the mesne profits less the Government revenue paid on account of Doorga Maye, the present respondent. Tara Munnee (the other respondent) pleaded that no arrear of revenue had been paid for her, neither was there any ameen's salary due by her. The former plea, the principal sudder ameen held established, from the *dakhillas*, or receipts, she had filed; and as the plaintiff had given no proof of his having paid any ameen's salary, this part he rejected *in toto* as regards both the defendants.

Against this decision the appellant appeals; and after going through the documents on which the judgment was passed, I see no reason for disturbing the decision as regards Tara Munnee, or what relates to the ameen's salary, as there is no proof of any payment having been made on this account by the appellant, but there are 12 *dakhillas* filed of Government revenue to the amount of rupees 145, 15 annas, 6 gundahs, 3 cowrees having been paid by the appellant, on account of the estate, and as Tara Munnee is not liable, it must have been for Doorga Maye's share; and if the appellant was a putneedar on the estate, he was fully warranted in paying up the revenue to save it from sale, as, if sold, his putnee would have been cancelled, and more, as from the copy of a petition filed in the appeal case No. 1 of 1848, it would seem that Doorga Maye petitioned the collector to have *her*

share in the estate sold. The claim against Doorga Maye was therefore rejected on insufficient grounds, and the case must be sent back to the principal sudder ameen, to take proof from the appellant that he was a putneedar on the estate, and, if so, decide who was liable for a refund of what he had paid on account of Government revenue, Doorga Maye or Radhanauth Sirkar, whom the appellant must make a defendant. The case is accordingly sent back to be disposed of as above indicated. The value of the stamp on which the petition of appeal is written, to be returned to the appellant, but all the other costs of this appeal are made chargeable to him.

THE 16TH FEBRUARY 1849.

No. 3 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 4th December 1847.

Gooroopershad Sircar, (Plaintiff,) Appellant,

versus

Tara Munnee Chowdrain and Doorga Maye Chowdrain, (Defendants,) Respondents.

THIS is a similar suit to No. 2, on the part of another putneedar, or an alleged putneedar, claiming a refund of rupees 752-11, (including interest,) on account of Government revenue and *butwarra* ameen's salary, paid on account of respondents. The principal sudder ameen, on the same grounds, dismissed the suit. This judgment, as relates to the respondent, Tara Munnee, and rejection of the claim to ameen's salary, I see no reason for disturbing; but as there are nine *dakhillas* for Government revenue paid in by the appellant and others, amounting to rupees 223, 13 annas, and a receipt for rupees 137, paid by the appellant and another, on account of a fine imposed on Doorga Maye, to recover which her share in the estate was advertised for sale, but *stayed* on the payment being made, it would appear that the estate was twice saved from sale by the appellant, and, if a putneedar, he was fully warranted in coming forward to pay up what was demanded, to save his putnee. But to decide if he was a putneedar, and who was liable for the refund, this case is also sent back to the principal sudder ameen, on the same grounds as in the appeal case No. 2, and the same order is passed for the refund of the value of the stamp on which the petition of appeal is written. The appellant, however, to pay all the other costs of this appeal.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ, JUDGE.

THE 6TH FEBRUARY 1849.

No 7 of 1845.

Appeal from the decision of Opender Chunder Nyarutten, Principal Sudder Ameen, dated 16th July 1845.

Radhey Singh, and his servant, Nein Singh, (Defendants,) Appellants,

versus

Rajcoomar Singh, (Plaintiff,) Respondent.

THIS case was remanded, for further consideration and decision, by the presidency Court of Sudder Dewanny Adawlut, on the 19th August 1847, (*vide* page 451 of the Decisions of the Sudder Dewanny Adawlut for August 1847.)

The Court, in its concluding paragraph, remarked as follows: "Now there was no doubt that the plaintiff's pottah could be easily proved as a mere matter of fact, but the real point of enquiry was whether the lease to the plaintiff was not a collusive and illegal transaction between the proprietor and the plaintiff to get rid of the real farmers, and this most material point the judge has not touched. The enquiry was essential as to whether the defendants had held possession during 1249, under an understanding that the lease was to be renewed, and whether it was renewed in form by the pottah of the 13th Chyte of that year, and, if so, whether the defendants could be ousted as long as they paid their rents during the continuance of the farm."

On further enquiry, the plaintiff has been unable to adduce any proof of possession of the farm in question, from 1242 to 1248 B. S., antecedent to having obtained the present lease from Futteh Singh, on the 7th Maugh 1249 B. S., for seven years, to commence from 1250 B. S., beyond a Nagree kubooleeut, which he and Goordyal jointly gave to Futteh Singh, (obtained from the son of Futteh Singh,) dated Aughun 1242 B. S., the validity of which appears doubtful, inasmuch as it is for eight instead of seven years, and was executed by the plaintiff for himself and Goordyal, and was executed four years after the purchase of the stampt paper on which it is written.

Plaintiff's proof, also, of dispossession in Sawun 1250 B. S., after obtaining the present lease, is meagre and wholly insufficient, and no other conclusion can be formed than that he had only gone to obtain possession, but could not obtain it owing to the opposition of the defendants.

On the part of the defendants it appears, that one of them, Radhey Singh, (nephew of the late alleged farmer, Goordyal Singh,) had collected the rents of the farmer, and paid them in to the zumindaree cutcherry at Boda, obtaining receipts for the same in the name of the proprietor, Futteh Singh. Radhey Singh has produced numerous receipts for rent during the late lease, bearing the seal of the zumindar of Chukla Boda, as well as receipts for rents for 1249 and 1250 B. S., the two first years of this present lease granted to him on the death of his uncle, the late farmer.

On the ground of the previous possession of Radhey Singh's uncle, Goordyal, as farmer, and the rents having always been collected by Radhey Singh up to the period of the farmer's death in 1246 B. S., and Radhey Singh having collected the rents to the end of the late farmer's lease, viz. 1248 B. S., it is not at all improbable that the future lease was granted to him, (Radhey Singh,) under the pottah, dated 13th Chyte 1243 B. S., I am, therefore, induced to attach more credit to the pottah of Radhey Singh than that of the plaintiff, who, as his former lease is stated to have expired in 1248 B. S., does not account why he did not obtain a renewal of his lease until the commencement of 1250 B. S., and, it being in full evidence that the plaintiff was present when Futteh Singh granted the pottah of the 13th Chyte 1249 B. S., above stated, to Radhey Singh, without having made any objection, he (plaintiff) must have collusively obtained his pottah from the son of Futteh Singh, after the death of the latter in Bysack 1250 B. S., the lease having been antedated.

The Court of Sudder Dewanny Adawlut having desired, also, that it should be ascertained why Dhurai Singh, who had obtained a four anna portion of the farm, of which the plaintiff was farmer of twelve annas, under the pottah of the 7th Maugh 1249 B. S., had not in any way been a party to the suit, Dhurai has appeared in person and stated that he did not join in the suit, as he had never obtained possession, nor had the means to prosecute.

I, therefore, decree the appeal with costs, and interest thereon, reversing the decision of the lower court.

THE 15TH FEBRUARY 1849.

No. 7 of 1848.

Appeal from the decision of the Principal Sudder Ameen, dated 17th May 1847.

R. P. Sage, (Defendant with others,) Appellant,

versus

Jattro Sircar, (Plaintiff,) Respondent.

THIS action was brought by the respondent, for the recovery of damages, amounting to rupees 1,597-15-10, for injury done to his indigo, grown on ninety-one beegahs and seven cottahs of land, situ-

ated in pergunnah Surroopore, by the dependents of Mr. Charles Bishop, the late farmer of that pergunnah, against whom and his servants this suit was preferred, who generally denied the truth of the plaint.—Mr. R. P. Sage standing in the place of the defendant, Mr. Bishop, as having succeeded to the management of the Boribaree indigo concern.

The lower court considered the trespass on the above quantity of land to have been proved, and assessed the damages as follows: assuming eighteen bundles of indigo plant as the produce per beegah, and one hundred bundles to form half a maund of indigo, and one hundred and fifty rupees as the price per maund, it gave a decree on eight maunds, eight seers, and fourteen chittacks, at rupees 1,233-4-6.

On a review of the papers, I concur with the lower court as to the trespass in 1246 B. S., by the dependents of Mr. Charles Bishop on the indigo crops of the plaintiff, but not to the extent set forth in the plaint, and admitted by the lower court, inasmuch as, instead of ninety-one beegahs seven cottahs alleged to have been cultivated and injured, I find, on the measurement papers of the plaintiff's ameen, (Mondil Sircar,) only seventy-four beegahs seventeen cottahs to have been cultivated with indigo, the plant of which was destroyed.—From this quantity of land, deducting six beegahs, fifteen cottahs, as a part of two objectionable suttas, Nos. 97 and 107, in the name of Puddolochun Shah, to which the plaintiff had no claim, there remain sixty-eight beegahs two cottahs, to which adding seven beegahs as the neej-jote of the plaintiff, the total land would be seventy-five beegahs two cottahs.—Assuming, on the evidence of Messrs. Wadschow, Beck, and Hermanson, ten bundles of plant per beegah as a fair average produce, in lieu of eighteen bundles, as assumed by the lower court, seven hundred and fifty-one bundles would have been yielded from this total cultivation, from which there would have been manufactured two maunds, ten seers and two chittacks of indigo which, at a value of one hundred and fifty rupees the factory maund, would have been worth rupees 337-15-6, and after deducting rupees 36-0-6, as the expense of manufacture, rupees 301-15. This sum I decree in modification of the lower court's decision, with costs of both courts, equivalent to the decree, and interest on the principal and costs.

THE 16TH FEBRUARY 1849.

No. 3 of 1847.

Appeal from the decision of the Principal Sudder Ameen, dated 17th March 1847.

Issur Chunder Bundopadhea, sudder naib of the Rajah of Cooch Behar, a minor, (Appellant,) Plaintiff,

versus

Ramsoonder Chuckerbutty, (Defendant,) Respondent.

THIS suit is instituted by the appellant for the recovery of rupees 868-13-11-15, as rent for 1250 B. S., assessed under Regulation V. of 1812, on four gown, one bissee, six doons, and eight kanees of land, being an eleven and a half anna portion of the jote Buhadee and others, which had always been held, at a fluctuating rent, by Raj Kissen Bhumick, (son of Ramram Bhumick,) and, after Rajkissen's death, by his wife, Joydurgah Dibia, in the fictitious name of Ram Lochun Bhumick, (nephew of Ramram,) and which jote was sold in execution of a moonsiff's decree passed against Joydurga Dibia, and purchased by the respondent in 1245 B. S.

The claim for increased rent is resisted by the respondent on the plea that, when he bought this jote at auction, it belonged to Joydurga Dibia, wife of Rajkissen, son of Ramram Bhumick, and to Tarramonee Dibia, wife of Sheebkissen Bhumick, son of the said Ramram, the two sons having inherited it from the father, who obtained a wakeh for it, under date the 12th Srawun 254 Suker, or 1170 B. S., from Rajah Khugendro Narain Bhoop Bahadoor, (said to have been a former Rajah of Cooch Behar, which is denied by the plaintiff,) intimating that, since he had lost the wakeh sunnud originally granted for the jote Buhadee and others, at a mokurrury jumma of rupees 455 *per annum*, which had been always paid, he (the Rajah) hereby confirmed that grant.

The respondent produces this wakeh, which bears no signature, but has on it a small seal (which cannot be read) purporting to have been that of Rajah Khugendro Narain Bhoop Bahadoor, together with a number of receipts granted in favor of Rajkissen for rent paid bearing only the zumindarry seal used at the cutcherry of Boda.

The wakeh and receipts are declared by the plaintiff to be forgeries.

The lower court dismissed the plaint, on the grounds, chiefly, that the plaintiff had, from the jumma-wasil-bakee papers of 1199, 1200, and 1203, failed to establish that the jote in question was liable to a variable assessment, that he had failed to prove the kubooleeut as executed by Ram Lochun Bhumick, and that there was a decree (on special appeal) of the zillah court of the 5th June 1837, wherein it was mentioned that the jote belonged to Ramram Bhumick, with which the jote of Ram Lochun had no connection. From this decision the plaintiff appealed.

On a review of the record, it appears the plaintiff produces a copy of the abstract settlement papers of Chukla Boda of the years 1199 and 1200, and of the jumma-wasil-bakee for 1203, *each authenticated* by the official signature of the commissioners of Cooch Behar, viz. Messrs. C. Bruce and W. T. Smith, by whom, during the minority of the then Rajah of Cooch Behar, the disputed lands, with the estate at large, were held khas, and which are, therefore, entitled to all credit. In the papers of 1199 the jote Bahadee and others as one deha are recorded in the name of Ram Lochun Surma as farmer (mustajur,) with that of Rajkissen Bhumick as security, the jumma rupees 465-7-6. In the papers of 1200, the only difference is that an abatement takes place in the rent of the preceding year, amounting to rupees 15-7-6, leaving the jumma rupees 450, at which it stands in the papers of 1203 B. S. By an authenticated extract from the quinquennial register of 1217 B. S., in the collector's office, the jumma was rupees 430 in that year. Plaintiff files an authenticated copy of a furdee signed by Rajkissen, containing a detail of the land and jumma of 1219 B. S., when the yearly rent was raised to rupees 967; and by an authenticated extract from the quinquennial register of 1227 B. S., the jumma in that year stood at the reduced amount of rupees 455, at which it continued up to the date of plaint.

In respect to the kubooleeut of Ram Lochun, dated the 2nd Srawun 1202 B. S., produced by the plaintiff, the subscribing witnesses to it having all died, it was incapable of being proved, but its authenticity may be inferred from the initials of the commissioner's signature being on the face of it, and Ram Lochun's name as farmer being recorded in the papers of 1199, 1200, and 1203, before referred to.

On a reference to the decree of the zillah court of the 5th June 1837, passed on a special appeal, alluded to by the lower court, in which the parties were Joydurga Dibia, wife of Rajkissen, appellant, *versus* Unnapurna Dibia, wife of Ram Lochun, respondent, it was decreed in favor of the appellant that the seven anna portion of this jote, of which she had been dispossessed by the late husband of the respondent, rightfully belonged to her, and which had only been held benamee by Ram Lochun, he having been a servant of Rajkissen.

There are three receipts also of the years 1213, 1216, and 1218, on account of this jote, in favor of Ram Lochun, which were filed by his wife in the court of the sudder ameen in 1829, notwithstanding which the defendant now files receipts for these and other years as granted to Rajkissen, purporting to bear the zumeendary seal of Chuckla Boda (the writing on which is quite illegible,) which, as well as the wakeh of 1170 B. S., which is not susceptible of proof, I look upon as entirely spurious. On the part of the plaintiff's suit, it is also in evidence that, for the remaining four and a half anna of this jote, plaintiff got a kuboolecut, dated the 28th Srawun 1250 B. S., from Sheebpershad Buxee, engaging to pay yearly rupees

312-1-15, for seven years, viz. from 1248 to 1254 B. S., which has been proved by the subscribing witnesses to it in the lower court. While, therefore, this portion of the jote is shown to be subject to temporary settlement, the defendant claims to hold the 11½ anna portion on a mokurruree jumma.

On the whole of the above showing, considering the plaintiff has fully proved that the defendant's jote, before becoming his property, had been subjected to a variable assessment, and that the defendant, consequently, is liable to an enhanced rent, under the provisions of Regulation V. of 1812, (the serving of the prescribed notice under that law having been established,) and wholly distrusting the defendant's wakeh of 1170 B. S., as well as the receipts in favor of Rajkissen filed by the defendant, and not considering the increased jumma proposed to be assessed on the defendant's lands, to which the defendant has made no objection, to be excessive, I decree the appeal, reversing the decision of the lower court. The jumma of 1250 B. S. is fixed at rupees 868-13-11-15, which the respondent will pay to the appellant, with costs of suit of both courts, and interest on the whole, principal and costs, from this date.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 5TH FEBRUARY 1849.

No. 23 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 18*th November* 1846.

Mohunt Gopal Das, (Plaintiff,) Appellant,

versus

1, Tekum Das, son of Janki Das; 2, Himmut Bahadur; 3, Musst. Shumshoonnissa; 4, Bugwan Dut; and 5, Sheik Morad Ali, purchasers, (Defendants,) Respondents.

CLAIM, for possession of a moiety of the villages Mugholea and Chuck Fida Ali, *alias* Burhurwa, with a garden (named Hadeo Khans,) in pergunnah Mehsee. Estimated value, including mesne profits, Company's rupees 1,096-15-0.

This suit was originally instituted on the 9th March 1844, setting forth that the property claimed was rent-free land, acquired by Mohunt Hurnam *alias* Hunnooman Das, (the ancestor of both the plaintiff and the defendant Tekum Das,) together with other villages situated in Patna and Tirhoot, from Rajah Dhurroop Singh, by virtue of birt sunuds dated in 1131 and 1145 F. S.; that Mussoodun Das and Janki Das were the surviving chelas, who, on the death of Hurnam Das, inherited the property in equal shares; notwithstanding, the said Janki Das (plaintiff's co-sharer) had, on the 6th Chyte 1231 F. S., sold the entire estate of Mujholea to the defendant Himmut Bahadur, who had re-sold it to Musst. Shumshoonnissa, who let it in farm to Mr. Hill, of Barah factory, and thus plaintiff was dispossessed of his half-share in that estate,—adding, (by way of accounting for the lapse of time,) that he had retained 24 beegahs, 5 cottahs, in his own cultivation, (zarayat,) together with a garden; that in like manner Chuck Fida Ali had been transferred by Janki Das, another heir and chela of Hunooman Das, to Bugwan Dut and Shaik Moorad Ali, admitting that these estates had been permanently settled, the former with Himmut Bahadur and the latter with the purchasers, Bugwan Dut and Morad Ali, who were found in possession, excusing himself on the plea of sickness for not preferring his claim as proprietor at the time of settlement, but that, on his recovery, he (plaintiff) had appealed against the settle-

ment, but his appeal had been rejected; hence this suit in the civil court to establish his proprietary right to a half-share in these villages.

The defendant Musst. Shumshoonnissa pleads that plaintiff's claim is barred by lapse of time, and, moreover, that he before instituted a similar claim for a moiety of the same altumgah villages, in the provincial court of appeal, and which was dismissed on the 24th August 1822, consequently this suit is not cognizable under Sections 14 and 16 of Regulation III. of 1793, and the story of holding any lands in his own cultivation, was devoid of truth.

The defendant Himmut Bahadur observes that he had sold his right to the above defendant, and therefore is no longer interested in the case, and the remaining purchasers, Morad Ali and Bugwan Dut, plead as set forth by Musst. Shumshoonnissa, adding that plaintiff's proprietary claim was enquired into and rejected at the time of the settlement of the villages.

The late principal sudder ameen remarks that, by various sunuds produced by defendants, and by the Patna decree of council, dated 6th August 1781 A. D., it is evident that this altumgah property was granted to Bhurrumcharee Hunnooman Das "ba furzundun nuslun bad nuslun," and that his son, Koonj Beharry, (whom plaintiff styles illegitimate,) brought an action against plaintiff's ancestor for this identical property, and which was decided in his favor by the civil court, that Hurnam Das, the grantee, was a sunjogee, or ascetic who has a family, and that Koonj Beharry, his son, had proved his right of inheritance before the Patna council, and the claim of Mussoodun Das (plaintiff's gooroo) had been previously rejected, therefore the present claim was not now cognizable.

JUDGMENT.

The law of limitation having been pleaded by respondents, it would have been sufficient for the lower court to decide upon that plea, without entering further into the merits of the case. Although it is urged by plaintiff, in appeal, that the provincial court's decision, dated 24th August 1822, referred exclusively to that portion of the property, situated in Patna, and is no bar to the present suit, yet I find on referring to the judgment passed by Mr. J. B. Elliot, that the claim of plaintiff was for a moiety of the whole of his altumgah villages, situated in Patna, Tirhoot, and Sarun, granted to Hunnooman Das, by his ancestor, and which he claimed by right of inheritance, setting forth that Janki Das and plaintiff's ancestor held them conjointly, and that Janki Das had improperly sold the entire property to others, and thus dispossessed him of his legal share. But for the reasons stated in the decision, it was found that Koonj Beharry was the rightful heir, and had substantiated his claim before the Patna council against plaintiff's ancestor, Mussoodun Das, and that plaintiff, or his ancestor, possessed no proprietary right in the said villages, and plaintiff's claim was accordingly dismissed with

costs. It is therefore evident, that this claim has been before heard and determined by a court of competent jurisdiction, and under the provisions of Section 16, Regulation III. of 1793, cannot be again entertained, besides which it may be observed that the claim, by plaintiff's own showing, is barred by the statute of limitations, as he admits having been out of possession for upwards of 12 years.

ORDERED,

That this appeal be dismissed with costs, and the decision of the principal sudder ameen be affirmed.

THE 15TH FEBRUARY 1849.

No. 20 of 1848.

A Regular Appeal from a decision passed by Mr. Colin McDonald, late Moonsiff of Pursa, dated 31*st January* 1848.

Sheik Uther Hosein and Syed Sultan Hosein, (Defendants,) Appellants,

versus

Hurrukdhari Rai, (Plaintiff,) Respondent.

(Beiro and Dirgopal Rai, third parties.)

CLAIM, for the reversal of a summary award, dated 3rd June 1845, for rent amounting to Company's rupees 149, 2 annas, 6 pies, on account of land cultivated in mouzah Mahomed Ali Chuck.

This suit was first instituted in 1845, before the moonsiff of Pursa, who, on the 21st March 1846, decided in favor of plaintiff, amending the summary award, and fixing the amount of rent payable by plaintiff for 10-16th of 1252 Fussily, at Company's rupees 24, 9 annas, 7½ krants, with costs in proportion.

In appeal before this court, the case was sent back for re-investigation on the 16th September 1847, as the question of the defendants' right to enhance the rents at discretion as auction purchasers had not been considered, and for enquiry into the claim of the third parties, whose lands were alleged to have been measured by the ameen sent for local investigation, and recorded as land in plaintiff's possession.

The moonsiff now upholds his former decision, explaining that, although defendants possessed the power as auction purchasers to enhance the rents, the *summary award* for enhanced rent (which was the subject of this suit) was opposed to Regulation VIII. of 1831, and the Sudder Court's decision dated 23rd November 1846, (volume II, page 391.)

Defendants again appeal, urging their right to enhance at discretion, being the auction purchasers of the estate, mouzah Mahomed Ali

Chuck, pergunnah Kusmer, and pleading that a notice was duly served on the plaintiff as required by law in Sawun 1251 Fussily.

JUDGMENT.

In this case I am of opinion that, although defendants, as auction purchasers, possess the power, by law, to enhance the rents of their estate at discretion, nevertheless the collector by Section 8, Regulation VIII. of 1831, is bound to restrict himself "to enforcing payment of the rent paid in past years, to the exclusion of all claims to increase, except on proof of *bonâ fide* written engagements to such increase." And this suit, it must be understood, is brought not by the auction purchaser to fix the ryut's rent, but by the under-tenant against the proprietor to contest the validity of the collector's summary award, which was based upon a putwaree's account attested by two witnesses, without any enquiry into past payments or any call for existing engagements.

The correctness or otherwise of this award is the sole point for enquiry in this case, and as it was not conformable to law, it must be reversed: the court's decision will not, however, interfere with any claims which may hereafter be instituted by the purchaser for the enhancement of rent agreeably to Act I. of 1845. Meanwhile, the moonsiff's decree, awarding a reduced rent according to past engagements, must be upheld.

ORDERED:

That this appeal be dismissed with costs, and the decision of the moonsiff of Pursa be confirmed.

THE 15TH FEBRUARY 1849.

No. 157 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, Moonsiff of Chupra, dated the 20th July 1846.

Ramkishen Saho and Kheiale Ram, (Defendants,) Appellants,

versus

Suntlal, adopted son of Guneshi Lal, deceased, and Mohun, father and heir of Gopal Das, deceased, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 114, 11 annas, 6 pies, being the balance of an account with interest.

This suit was decided by the moonsiff of Chupra, on the date abovementioned, in favor of plaintiffs, but reversed in appeal by this court, on the 11th August 1847, in consequence of a counter claim set up by defendants, which had not been considered, and plaintiffs' claim was nonsuited, leaving either party at liberty to sue for a general adjustment of accounts, in order to avoid splitting the cause of action.

A special appeal was admitted by the Sudder Dewanny Adawlut, on the petition of Surwunt Lal and others, (Sunt Lal) on the 29th April 1848, and the case remanded for re-trial after taking the necessary steps for the attendance of both parties.

Both parties have now appeared before this court through their respective pleaders. Respondent urges that the appellants' objections are futile, that he had the opportunity of producing his accounts in refutation, which he had not done, and the witnesses cited prove that the balance had been demanded unsuccessfully. Appellants reiterate their objections, desiring a comparison and adjustment of their respective accounts, and declare their willingness to pay any balance which, after such investigation, might be found against them.

On reviewing the record of the case, I find that defendants, who are shroffs of Arrah, pleaded a set-off due to them of Company's rupees 499. The claim of plaintiffs (who are mohajuns of Chupra), being only Company's rupees 109-2-3, exclusive of interest.

This plea on the part of the defendants was not in any way considered by the lower court, and a decree was passed against them, after merely comparing the original account with the copy filed, and upon the evidence of two witnesses cited to previous demand. This summary mode of deciding against defendants is deemed insufficient. The moonsiff should have called upon defendants within a limit of time to prove the alleged set-off in their favor, as pleaded, by producing their books, or any other documents or proofs which they might possess, more especially as the existence of a counterclaim was apparent, by the recorded fact of defendants having instituted a suit in the district of Shahabad against plaintiffs, for the amount thereof, in December 1845, only a month and a half previous to the institution of this suit, but which was nonsuited in consequence of the death of Gopal Das, the defendants' ancestor.

ORDERED:

That this appeal be again decreed, and the case remanded to the moonsiff of Chupra, who, before he disposes of the case finally, will take into due consideration the pleas of the appellants. The costs of suit will be adjusted hereafter; the appellants will receive back the amount of stamp duty on their petition of appeal.

THE 17TH FEBRUARY 1848.

Nos. 75 and 76 of 1848.

Regular Appeals from a decision passed by Syed Mahomed Wajid, Moonsiff of Chumparun, dated 27th March 1848.

Deodut Tewarry, (Plaintiff,) Appellant,

versus

Bissheshur Pandy, (Defendant,) Respondent.

CLAIM for reversal of a summary award of the deputy collector of Chumparun, dated 7th September 1847, and refund of Company's rupees 81, 13 annas, including costs of summary suit.

In this case it appeared that defendant, the kutkinadar of mouzah Jubdoul, tupa Khuda, pergunnah Mujhowah, demanded rent from plaintiff for 32 beegahs, 6 cottahs, 16 dhoons, on account of 1254 Fussily, at rupees 2, 2 annas per beegah, which, including rupees 4, 4 annas, on account of exchange, and rupees 2, 2 annas on account of hisabana, amounted to Company's rupees 74, 6 annas.

Plaintiff urged that he had cultivated only 17 beegahs, 10 cottahs, and that his rent, according to a former lease of 1249 Fussily, granted by Ajaib Singh, ticcadar, had been fixed at 1 rupee per beegah. The deputy collector observed that, in a former case, Act IV., the darogah had measured the land, and found plaintiff in possession of the quantity stated by the sub-lessee, or kutkinadar, and therefore held that defendant (in this case) was entitled to assess the difference between what was found and what was admitted. The deputy collector proceeded to do this himself, observing that plaintiff had previously paid as much as rupees 4, 10 annas per beegah, and therefore rupees 2, 2 annas, he conceived an equitable rate, and accordingly awarded in Company's rupees 74, 6 annas, and rupees 7, 7 annas costs, or Company's rupees 81, 13 annas, deducting rupees 2, 2 annas, on account of hisabana, as an illegal cess.

The moonsiff of Chumparun, upon the institution of a regular suit to cancel the above summary award, deputed an ameen to measure the land, who found only 18 beegahs, 18 cottahs, 9¼ dhoons, in possession of plaintiff, and accordingly the moonsiff proceeded to assess the above quaintity of land at what he considered an equitable rate, taking an average of the village rates, and fixing the amount at rupee 1, 9 annas per beegah, awarding a refund of Company's rupees 44, 12 annas, with rupees 20 costs, total Company's rupees 64, 12 annas.

Both parties appeal separately, plaintiff urging his rent to be rupee 1 per beegah, agreeably to former engagements, and declaring payment of Company's rupees 21, including rupees 3, on account of the previous year,—defendant urging that he was entitled to Company's rupees 2, 2 annas per beegah, for 32 beegahs, 6 cottahs, 16 dhoons, and denying any payment.

JUDGMENT.

It was held in appeal that the decision of the deputy collector was in excess of his authority: he was not called upon to fix an equitable rent, but to enforce payment for the year in question at the rate paid in past years, unless *bonâ fide* written engagements had been entered into for an increase.

The decision of the moonsiff is in like manner beyond the exigency of the case: he should have restricted himself to the cause of action, viz. the legality or otherwise of the summary award which plaintiff sued to cancel; instead of which he strikes an average of the village rates, and assesses accordingly.

The deputy collector having clearly exceeded his authority, by which (under the provisions of Regulation VIII. of 1831) he was

restricted to enforcing payment of rent at the rate of past years, his summary award, as applied for, must be cancelled. When the farmer or kutkinadar comes into court to fix the plaintiff's rent, or the plaintiff sues for a renewal of his lease with the late farmer, it will be time enough for the court to interpose its authority in fixing the rent at a legal and equitable rate: at present the cause of action restricts the court from doing more than annulling an illegal summary award.

ORDERED:

That this appeal, No. 75, be decreed, and the moonsiff's decision, dated 27th March 1848, and also the deputy collector's award, dated 7th September 1847, be both annulled with full costs, including those of this court, to be liquidated by Bissheshur Pandy, and that a copy of this decision be filed with the appeal case No. 76, which is hereby dismissed with costs.

THE 24TH FEBRUARY 1849.

No. 8 of 1844.

A Regular Appeal from a decision passed by Syed Imdad Ali, late ex-officio Sudder Ameen of Sarun, dated the 21st February 1844.

Sheonath Singh, (Defendant,) Appellant,

versus

Sheik Hadi Ali, (Plaintiff,) Respondent.

CLAIM, principal, Sicca rupees	401	0	0
Interest, ...	401	0	0
Exchange, ...	53	7	5
Total, Company's rupees	855	7	5

On a deed of advance, dated 5th November 1809.

This case was originally tried by Syed Imdad Ali, principal sudder ameen, in his capacity as *ex-officio* sudder ameen (the amount claimed being under rupees 1,000,) and a decree was passed in plaintiff's favor for the amount claimed, absolving Musst. Rohmin Koer, (wife of Mohen Singh,) a co-defendant. An appeal was heard, and the decision confirmed by Moulvee Mahomed Rafiq, in his capacity as principal sudder ameen, on the 26th December 1845. A special appeal was admitted by the Sudder, on the 30th August 1847. The Court observing that "the bond was dated 5th November 1809 A. D., nearly thirty-four years since, and the reasoning for getting over the statute of limitation in the decree of the sudder ameen, affirmed by the principal sudder ameen, was utterly unworthy of consideration," and deeming the decisions of the lower courts to be contrary to the provisions of Section 14, Regulation III. of 1793,

(on the 22nd July 1848,) the Court at large cancelled the decision in appeal, considering also that, "as the original case had been tried and decided by a principal sudder ameen, the appeal ought to have been heard and determined by the judge, and not by another principal sudder ameen," and accordingly remanded the proceedings to the judge, with orders to try the case in the presence of the vakeels of the principal sudder ameen's court.

I find that the cause of action is a deed of advance, dated 5th November 1809, by which one-twelfth share of Bhawalpoor, pergunnah Goah, was pledged for a term of four years, (viz. from 1217 to 1220 Fussily,) for an advance of Sicca rupees 401. The deed was executed by Sheonath Singh, (defendant,) in favor of Reaz Ali, the uncle of plaintiff, and it was further stipulated that, if the advance was not paid at the end of 1220 Fussily, the lease on advance was to continue until it was paid.

This deed with another was subsequently transferred by Sadik Ali, plaintiff's father, (who became the possessor by inheritance,) to one Bussunt Singh, as security for another bond, amounting to Sicca rupees 601. When this money was paid, plaintiff applied to get back his lease on advance, which being refused, he instituted a suit against Mohen Singh, (son of Bussunt Singh, the holder,) to recover the deed, and obtained a decree, dated 28th December 1841, on proof of Mohen Singh being the holder of the deed, which had not been restored, but without reference to the merits of the deed itself, and plaintiff was at the same time directed to recover the amount of advance, (Sicca rupees 401,) from the original debtor; hence this suit.

Defendant pleads the law of limitation as a bar to the cognizance of this suit, and urges that the money had been paid or otherwise the deed would not have been restored. (It was filed by defendant.)

The late principal sudder ameen (Syed Imdad Ali) considered that, as the period of the lease was unlimited, (the advance being payable at any time,) plaintiff was not bound to recover within twelve years, and moreover, plaintiff had intermediately obtained a decree for the restoration of the deed itself, adding that the deed had been surreptitiously obtained, and not restored on payment of the advance, and, for other reasons, decreed the case in favor of plaintiff.

In appeal, it is urged that the suit is barred by the law of limitation. I find the deed is dated nearly thirty-four years before the institution of this suit, and although the period of payment was unlimited, plaintiff's vakeel admitted on the 16th December 1843, before the principal sudder ameen, that plaintiff had been *dispossessed* from the farm since 1226 Fussily, corresponding with 1819 A. D., which is twenty-two years before the institution of this suit. I am therefore of opinion that the cause of action in this case should be reckoned, not from the date of the farming lease on an advance payable at any period, but from the date of dispossession, which

being twenty-two years prior to the institution of the case, clearly bars the cognizance of the suit.

ORDERED:

That this appeal be decreed, and the decision of the *ex-officio* sudder ameen, dated 21st February 1844, be reversed, and the claim be dismissed with full costs, to be liquidated by respondent.

THE 24TH FEBRUARY 1849.

No. 46 of 1843.

A Regular Appeal from a decision passed by Syed Imdad Ali, late Principal Sudder Ameen of Sarun, dated 27th October 1843.

Kishendeal Singh, Seetulpershad Singh, and Juddoonath Singh, heirs of mortgagers, (Plaintiffs,) Appellants,

versus

Talewund Rai and others, heirs of Adheen Rai, Ramtawakul Rai, and Seetaram Soumber, sons of Kishna Rai, mortgagee, (Defendants,) Respondents.

CLAIM, for possession and registration of names, as proprietors of 1-6th share of mouzah Karoom, pergunnah Chowbarrah, and for separation of the said share, with mesne profits, from 10th August 1819 to 1st May 1832, including interest and exchange. Total valuation Company's rupees 48,668-9-6.

The particulars of this case are briefly recorded in the Decisions of the Sudder Dewanny Adawlut, No. 39, 17th June 1848, page 535.

The moonsiff of Sarun, upon the suit of the mortgagees for possession after issue of the notice to the mortgagers, under Regulation XVII. of 1806, (the period for redemption having expired,) decreed in favor of the mortgagees, under date 10th August 1835. In appeal, the principal sudder ameen, on the 14th March 1837, calculating (erroneously) from the date of the *receipt of the notice* served under Regulation above quoted, instead of the date of *issue*, reversed the moonsiff's decision, and upon a special appeal, Mr. H. Nisbet, the judge, on 12th June 1839, reversed both decisions, declaring the transaction to be one of *simple mortgage*, and not of the nature of bye-bil-wufa, or conditional sale, and dismissed the original claim, and ordered the mortgagers to take back the money, which they had deposited in court, intimating that the mortgagees might bring a suit for the money, if not amicably adjusted.

The suit, however, was brought by the mortgagers for possession after adjustment of accounts, regarding the case as one of simple mortgage, subject to the provisions of Regulations I. of 1798 and XV. of 1793, and not a conditional sale with a right to render it absolute (as assumed by the mortgagees.)

The principal sudder ameen decreed accordingly, awarding possession to the mortgagers on payment of a certain sum, Company's rupees 1,236, 13 annas, 11 pie, found to be still due to the mortgagees.

In appeal it was held by this court, on the 27th November 1845, that according to the terms of the second agreement, dated 28th January 1821, the aggregate sum borrowed was to be paid within the stipulated period fixed, (viz. before the end of 1234 F. S.,) which not having been done, nor within a year from the *issue* of the notice, served on plaintiff's ancestors, under Regulation XVII. of 1806, the sale must be considered absolute and irrevocable, upholding the moonsiff's original decision as just and proper, and reversing the principal sudder ameen's decision.

From this a special appeal was preferred, and the Sudder Court have held that this court "was bound by the previous decision of Mr. H. Nisbet, of 12th June 1839, as to the nature of the transaction, and was not at liberty to open up that point again, nor to uphold a decision, which had been reversed and set aside by his predecessor in office, Mr. H. Nisbet, and accordingly remanded the proceedings, with instructions to dispose of the appeal on its merits, with reference to the petition of plaint filed by the plaintiffs, the mortgagers."

JUDGMENT.

Having again carefully perused the two deeds, dated 2nd August 1819 and 20th January 1821, upon which this suit is founded, I have no hesitation in stating that the first was clearly a farming lease granted in consideration of an advance to be paid in eight years, or at the close of any subsequent year, and the second was a deed of conditional sale, or bye-bil-wufa, and not a *simple mortgage*, as ruled by Mr. Nisbet. The terms of the second deed (taking a further advance of rupees 701) stipulated payment of that sum, together with the former advance, with interest at 1 per cent. *per mensem*, by the end of 1234 F. S., (8 years,) failing which, the sale of the share was to become absolute and the mortgagees were to become the actual proprietors. The money was not paid until four days after the expiration of the year of grace allowed by law for redeeming mortgages, the sale, therefore, became to all intents and purposes absolute, and the mortgagees were justly entitled to possesssion, as originally decided by the moonsiff in 1835.

Nevertheless, I fully concur with the Sudder Court that the opinion of my predecessor, declaring the transaction to be one of "simple mortgage," must stand, and the judgment is not liable to be reversed by the *same court*, however erroneous that judgment may be.

Under these circumstances, (law having got the better of justice,) it remains to consider the merits of the principal sudder ameen's present decision, decreeing possession to plaintiffs, the mortgagers, on

payment of Co.'s rupees 1,319, 4 annas, 11 pie to the defendants, the mortgagees. Regarding it, as I am reluctantly bound to do, as a simple mortgage, the case must be disposed of under Regulation I. of 1798, and Section 11, Regulation XV. of 1793. By the latter law, the mortgagee is required (for the adjustment of accounts, when the mortgagee, as in this case, has had the usufruct of the mortgaged property,) " to deliver in the accounts of his gross receipts and also of his expenditure for the management and preservation of the property," and the mortgagee is to be sworn to their truth and authenticity, and, after hearing any objections offered, the court is to adjust the account.

This has not been done by the principal sudder ameen. In order to ascertain the mesne profits from 1227 to 1247, (a period of twenty-one years,) he has taken an ameen's report of the collections for only two years (1227 and 1228 F. S.,) and struck an average from them for the whole period. Plaintiffs appeal against this mode of adjustment, urging that the collections of each year should have been ascertained, including the rents derived from long grass (for thatching,) as well as from fisheries and orchard, and the respondents should have attested them on solemn affirmation as required by law. Respondents urge in reply, that the " jummabundee" papers were not filed by them, and therefore their attestation was uncalled for.

For the reasons above assigned, I consider that the principal sudder ameen's decision is defective, and the case must be sent back to the principal sudder ameen's court to be disposed of in the manner set forth under Section 11, Regulation XV. of 1793.

ORDERED:

That the appeal be decreed with costs, and with refund of stamp fees on the petition of appeal, and the case be remanded to the principal sudder ameen's court for re-trial as above indicated.

THE 28TH FEBRUARY 1849.

No. 1 of 1848.

A Regular Appeal from a decision passed by the Collector of Sarun, on the 26th July 1848, under the provisions of Section 30, Regulation II. of 1819..

Bhurrut Rai, Bukus Rai, Baj Rai, and Toolsee Rai, (Defendants,) Appellants,

versus

Moharaja Nawulkishore Singh, (Plaintiff,) Respondent.

CLAIM, for the revenue of 79 beegahs, 5 cottahs, 5 doors of land, in mouzah Nooniya, pergunnah Mujhowah, with mesne profits from the date of suit, estimated value at rupee 1 per beegah, 18 times the annual rent, Company's rupees 1,426, 14 annas, 6 pie.

This suit was instituted before the collector on the 26th January 1847. Plaintiff set forth that he was the proprietor of the village, with whom a settlement had been made in 1198 Fussily; that the rent-free land in possession of defendant had been relinquished by the orders of Government, dated 11th July 1842, being under 100 beegahs, and he, the proprietor, was, therefore, entitled by Section 6, Regulation XIX. of 1793, to resume and assess.

Defendant urged that his ancestors obtained a rent-free sunud for 101 beegahs of land, denominated birt lakhiraj, including the land in dispute, in the year 1125 Fussily, of which 79-5-5 had been brought into cultivation; that the settlement of the land had been concluded with them as the occupants, and the claim of plaintiff to assess after so many years was not cognizable under Section 14, Regulation III. of 1793, and the Court's Construction, No. 813. (The said Construction, ruling that a miscellaneous application to a court of justice could not be considered as preferring a claim, is inapplicable to this case.)

The collector declared the land to be not registered in his office registers of 1202, 1207, and 1208 Fussily, but that in Raja Beerkishore Singh's kubooleeut all rent-free land and sayer was excepted; that the Government had relinquished the revenue of the land in dispute (being less than 100 beegahs,) in July 1842 only, and therefore the plea of lapse of time was not tenable; and secondly, that defendant's sunud was not stated to be hereditary (mouroosee,) and therefore was liable to assessment by the proprietor, under the provisions of Section 26, Regulation XIX. of 1793,—passing a decree, adjudging the right to plaintiff, who in execution would receive the revenue with mesne profits from the date of the decree, at the rate fixed by Section 9, Regulation XIX. of 1793.

Defendants appeal, urging that as the land was excepted in plaintiff's ancestor's kubooleeut, he cannot levy rent for land on account of which he himself pays no revenue; secondly, that it is not usual to insert the word mouroosee in rent-free sunuds; and that at the time of settlement, the proprietor himself alluded to the existence of rent-free land, without disputing his (appellant's) right of tenancy, and that former zemindars had not interfered with his birt tenure.

JUDGMENT.

The grant, whether hereditary or otherwise, not having been registered as required by Section 24, Regulation XIX. of 1793, is null and void, and the land becomes liable to assessment, and, being under 100 beegahs, the revenue to be assessed will belong to the person responsible for the discharge of the revenue of the estate in which the land is situated. The collector should, however, have satisfied himself, with declaring the land *liable to assessment*, and should not have proceeded to *fix the rate assessable*, (*vide* Construction No. 576,) nor, is it apparent why he has awarded mesne profits from the date of

his *decision*, and not from the date of the *institution of the suit*, which was demanded, and to which plaintiff seems justly entitled. In regard to the plea of lapse of time and uninterrupted possession for many years, I have to observe that suits of this nature are not affected by the law of limitation, and neglect to demand rent for twelve years does not deprive the zemindar of his right to assess when he pleases, (*vide* decision of Sudder Dewanny Adawlut, dated 28th January 1846,) Ghosein Das, appellant, *versus* Gholam Maheedoodeen, respondent.) For the above reasons,

It is Ordered:

That this appeal be dismissed with costs; and in amendment of the collector's decree, I direct that the land in question be simply declared *liable to assessment* by the proprietor of the estate. Plaintiff not having appealed respecting the collector's order in regard to mesne profits, this court will not interfere with that part of the collector's decree.

The 28th February 1849.

No. 1 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late Principal Sudder Ameen of Sarun, dated 10*th December* 1846.

Moharaja Moheshur Buksh Singh, (of Doomraon,) Rampershad Singh, Sheopershad Singh, and Jugnarain Singh, (Plaintiffs,) Appellants,

versus

Musst. Kuddeeroonnissa, wife of Monowur Ali, (Principal Sudder Ameen of Shahabad,) Ramadeen Pandey, Achaieram Pandey, Madooram Pandey, Siriram Pandey, and Gopal Pandey, (Defendants,) Respondents.

Claim, for possession of 20 beegahs of land belonging to Goolalpoor, pergunnah Arrah, with mesne profits from 1244 to 1250 Fussily, inclusive; total valuation, including wasilat and interest, Company's rupees 1,304, 5 annas, 9 pie.

This suit was instituted originally in the district of Shahabad, but referred for trial to this district by a resolution of the Sudder Dewanny Adawlut, dated the 16th May 1845, probably in consequence of the principal sudder ameen of that district and his wife being the principal defendants in the case.

The plaintiffs set forth that the disputed land, which they designate a dhebur, or mound, measuring 20 beegahs, and situated on the south boundary of their estate, running east and west, belongs to their village Gopalpoor, and that defendants had forcibly dispossessed them of the said land. In the plaint is detailed the amount shares of each in their own village—the raja being a four annas proprietor, and Rampershad and Sheopershad joint sharers in the remaining twelve annas, and they include Jugnarain amongst the plaintiffs as having been the original holder of the entire estate.

Defendant Monowur Ali states, in answer, that their village to the south of Gopalpoor is called Muthorapoor, and is divided from Gopalpoor by a dundar, or ridge, which is bounded on either side by tar trees, and which has always appertained to the village of Muthorapoor; that the said village was settled exclusively with Musst. Kuddeeroonissa, his wife, and not with him, therefore he should not have been made a party to the suit; and the other defendants, who are styled partners, are in no way interested in the matter.

Madooram and Gopal, other defendants, side with plaintiff, and the remaining defendants are silent.

The principal sudder ameen (Moulvee Mahomed Rafiq) says it is not to be concealed that this is a claim for rent-free land settled with Musst. Kuddeeroonnissa, which plaintiffs declare to be nizamut, (or paying revenue to Government,) and no law exists empowering the civil courts to adjudicate regarding land stated to be paying revenue, when the revenue authorities have declared it to be rent-free; secondly, that plaintiffs' own witnesses prove Monowur Ali's possession for many years; and thirdly, that the evidence to dispossession is contradictory; and lastly, that two of the defendants side with plaintiffs; and therefore dismisses the suit with costs against the plaintiffs, with exception of the costs of the two who confess judgment, which is adjudged payable by them respectively.

JUDGMENT.

Plaintiffs, in their plaint, do not allude to the period of their dispossession, although it may be inferred to have been in 1244 Fussily, from which time back rents are claimed. Appellants (plaintiffs) have filed a native map and cited several witnesses in proof, but there is no oral or documentary evidence adduced sufficient to satisfy the court that the 20 beegahs claimed belongs to Gopalpoor, and that defendants (as set forth in the plaint) forcibly dispossessed the plaintiffs from the said land. The six witnesses cited merely say, that, in their belief, the land appertains to Gopalpoor, but that Monowur Ali has been in possession for eight or nine years. This is clearly insufficient to establish plaintiffs' proprietary right; and the principal sudder ameen was therefore quite correct in dismissing the claim, but the reasons assigned by that officer are for the most part irrelevant. The principal sudder ameen's first reason is altogether unintelligible; the second in regard to present possession is no proof of defendants' proprietary right; thirdly, no evidence was adduced in regard to *forcible dispossession;* and fourthly, the confession of judgment by two defendants (perhaps cited as defendants for the express purpose) is no evidence against other defendants, who repel the charge, and claim the property as their own. For the reasons above stated, deeming the proof adduced by plaintiff altogether insufficient, I dismiss the appeal with costs.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, ESQ., JUDGE.

THE 20TH FEBRUARY 1849.

No. 191 of 1848.

Appeal from the decision of the late Baboo Chytunchurrun Das, Moonsiff of Lushkerpore, dated the 24th August 1848.

Khellaram Deb, Appellant,

versus

Soudaram Deb, Respondent.

RESPONDENT sued under a bond, executed by appellant on the 14th Poos 1247.

Appellant denied execution of the bond, and urged that, had he executed it, it would be signed with his own hand; that there was a deed of purchase by appellant and his brother, deposited with respondent's father, who was obliged by the police, on appellant's complaint, to give it up; that this is the cause of the fabrication of the bond and institution of the suit; that the respondent is not a mahajun, but that appellant is, and advanced Sicca rupees 9 to respondent's father, ten or eleven years ago, on pledge of a necklace, which has not yet been redeemed; and that, in consequence of the death of appellant's aunt, he was absent at mouzah Oulookandee, in pergunnah Turruf, from the 20th Aughun to the 25th Poos 1247.

Respondent alleged, in his reply, that appellant assented to his name being put on the bond as he could not write, merely making his mark; that he had probably since learnt to sign his name, in order to counteract his (respondent's) just claim; that appellant did not have his deed of purchase returned, in consequence of having made a complaint at the thanah, but in consequence of his having paid money due to respondent's father; that appellant has allowed the claim since institution of the suit; and that the story about the necklace is untrue.

The moonsiff (Baboo Chytunchurrun Das) held execution of the bond and receipt of the consideration mentioned in it, proved, as stated by respondent, and observed that the evidence of appellant's witnesses did not well support his defence, and was, indeed unworthy of reliance, especially with reference to the fact that appellant's signature on the vaqualutnamah was in writing, the power of which had obviously been newly acquired: and on these grounds he decreed the claim.

Appellant now urges that respondent has made up this suit with a bond written on a stamp sold in Calcutta, from enmity, in consequence of a purchase of land; that the draftsman of the bond, one of the witnesses, has been imprisoned for perjury; and that *his* witnesses are respectable, while those of respondent are low fellows and false.

JUDGMENT.

Appellant stated, in his answer, that the compulsory return of the deed of purchase deposited with respondent's father, was the cause of the suit, while now, he alleges the enmity to have root in the purchase itself. His plea of *alibi* is attested by two witnesses, with specification of dates, and two other witnesses swear that he is a mahajun, but the evidence to the plea of *alibi* so long ago as 1247, (1840,) is extremely suspicious, while the evidence of the other two witnesses adduced by him proves nothing. On the whole then, I see no sufficient reason to distrust the evidence of respondent's witnesses, who prove execution of the bond on receipt of the consideration represented in it, stating that the stamp was furnished by appellant.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 20TH FEBRUARY 1839.

No. 208 of 1848.

Appeal from the decision of Baboo Hurgouree Bose, Moonsiff of Russoolgunge, dated the 14th September 1848.

Bunnoo Ram Das, Appellant,

versus

Dagoo Ram Chand, Respondent.

RESPONDENT sued for rupees 30, damages, in consequence of having been wrongfully abused and turned out of an assembly on the occasion of the festival of the Shama Pooja.

The moonsiff (Baboo Hurgouree Bose) held the abuse and removal stated by respondent proved, and decreed rupees 6, damages with costs, in proportion against appellant and another.

Appellant now urges that his defence was not received by the moonsiff, with other pleas.

JUDGMENT.

I find that the prescribed proclamation for the attendance of appellant, of which he does not plead ignorance, was published at his house, on the 2nd Jyte 1255, (14th May 1848,) and that he presented a petition to the moonsiff, on the 16th of Bhadoon following, (30th August,) alleging illness; that it is recorded in the moonsiff's proceedings of the 4th September, or 21st of Bhadoon, that appellant, on being questioned, admitted that he had been well a whole month, and

had gone to the moonsiffee, but had refrained from filing his answer, because respondent had adduced his witnesses; and that there are discrepancies in the evidence of the witnesses brought to prove the asserted illness. Under these circumstances I concur with the moonsiff in discrediting the evidence to the illness, and, deeming appellant to be convicted, by his own admission, of wilful and inexcusable default barring every plea,

IT IS ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 20TH FEBRUARY 1849.

No. 89 of 1848.

Appeal from the decision of the late Moonshee Chytunchurrun Das, Moonsiff of Lushkerpore, dated the 28th March 1848.

Meghoo Ram Kybert, Appellant,

versus

Jye Tara Dassee, for self and minor son, Respondent.

RESPONDENT sued under a bond, dated 30th Jyte 1248, for rupees 29, payable with interest on the following Phalgoon, executed in favor of her late husband, by appellant and Ramchurrun Kybert, who repaid 15 rupees on the 7th Phalgoon 1251.

Meghoo Ram Kybert and Ramchurrun Kybert resisted the claim. Meghoo Ram pleaded that he borrowed no money on the date declared by respondent, but that, in Chyte 1243, he borrowed rupees 8 on a bond for rupees 11 from respondent's late husband, who, as the bond was not liquidated, seized him in Jyte 1248, confined him in his house, and compelled him to execute a fresh bond for rupees 29, including the principal and interest of the former one, which was returned, and interest in advance, of which circumstances the draftsman of the bond and the subscribing witness were cognizant; that he paid an instalment of rupees 7 in goods, in Asin 1248, which has not been credited, as Nubkeshwur Rai, respondent's brother, and Simboo Nath Nundee her gomashtah, Ramnarain her nephew, and other persons knew. Ramchurrun pleaded that he went to enquire about Meghoo Ram at respondent's house, but borrowed no money; and he added that he could write, and would have signed the bond, had he been a party to it.

The moonsiff (Baboo Chytunchurrun Das) held it proved, by the evidence of respondent's witnesses, that appellant and Ramchurrun Kybert voluntarily executed the bond in suit, in settlement of an old debt; he observed that the defendant's pleas were not well made out by their witnesses, the evidence of two of whom he deemed significant of the truth of the bond, which, whether the former bond were in the name of Meghoo Ram alone or not, sets forth its execu-

tion in settlement of a debt due from both the defendants; and, noticing that defendants had taken no step to procure the attendance of the rest of the witnesses, as they were required to do on the 19th of January last, he decreed the claim with costs.

Appellant now urges that one of the subscribing witnesses has deposed to the bond in suit, for rupees 29, having been executed on settlement of a former bond executed by him alone for rupees 11, that the evidence of Narain Singh and Gour Mistree, also, in some degree, corroborates his defence; that, by the testimony of his own witnesses, it is proved that the bond was given in satisfaction of the old one with inclusion of illegal interest; but that no mention of the old bond was made in the new one, because the sum expressed in the latter, is more than the amount in the former with legal interest; and that he put the old bond before the moonsiff, who told him to produce it when the case came on for hearing, and nevertheless decided without taking it, recording that it was not filed.

JUDGMENT.

I have to decide whether the bond in suit was executed voluntarily and legally, or on compulsion, and with inclusion of illegal interest, as appellant avers; and, in order to ascertain whether the bond, which appellant wishes to adduce in próof of illegal interest, was offered to the late moonsiff or not, I directed the present moonsiff to take the depositions of the vakeels of the parties in regard to that question. His return shews that respondent's vakeel is dead, and that appellant's vakeels have supported their client's allegation, which there is no means of disproving. The suit, then, on this ground, appears to me to need further investigation; moreover, neither has respondent stated, nor have his witnesses proved, the amount of the old bond for which the one in suit was substituted, but one of them has stated, on hearsay, that it was for rupees 11, while another has declared that, at the time of the execution of the new one, the parties appeared to be mutually displeased with one another, and appellant's witnesses have distinctly sworn that the old bond was for rupees 11, and that the one in suit was executed on compulsion. If the old bond, which seems to have been withheld, because of its being on an inadequate stamp, a fact of no importance when the bond is not to be adduced to enforce the obligation which it represents, be produced, identified, found to be for rupees 11, and dated in 1243 B. S., and no additional consideration was paid to appellant on execution of the one in suit, I am unable to see how the latter can be looked on otherwise than tainted with illegal interest.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the suit remanded for the investigation indicated above. The price of the stamp of the petition of appeal will be returned, and the remaining costs will be provided for in the future decree of the moonsiff.

THE 24TH FEBRUARY 1849.

No. 190 of 1848.

Appeal from the decision of Baboo Hurgouree Bose, Moonsiff of Russoolgunge, dated the 26th August 1848.

Dana Beebee, Appellant,

versus

Shumsooddeen and others, Respondents.

APPELLANT sued for rupees 150, damages for abuse and assault. Sheik Shumsooddeen denied the abuse and assault as stated by appellant, and countercharged her with having, in conjunction with others, beaten his nephew, and, he added, that the quarrel had been the subject of complaints to the magistrate, in whose court it had been amicably adjusted.

The moonsiff (Baboo Hurgouree Bose) mistrusted the evidence of appellant's witnesses, on account of discrepancies in it, and variation in appellant's statement before the magistrate and her statement in this suit: and, on these grounds, he dismissed the claim.

Appellant now urges that her claim is made out, and that the discrepancies in the evidence of the witnesses are not such as to be destructive of their credit.

JUDGMENT.

I find that on the 28th Kartik 1254, (13th November 1847,) a petition was presented, in the name of appellant, and, according to her own admission in this suit, by her son, to the magistrate, complaining of the assault, and that it was struck off in default, in consequence of her non-attendance; that subsequently her son prosecuted, alleging that his mother was a *purdah nisheen,* or secluded woman, and that he was induced, according to the tenor of the *dustburdaree,* or deed of relinquishment, to forego the prosecution, on the solicitation of respondents, and being reimbursed the amount of his costs; and though no written authority is shewn permitting the son to prosecute, still it is in accordance with the custom of the country for a male relation to prosecute for the secluded female in such cases, without such authority; and the prosecution having, in the present instance, been by the son, and he having been induced, by pecuniary consideration, to withdraw it, and no loss of property having been sustained, I do not think the subject open to question in a civil suit.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 24TH FEBRUARY 1849.

No. 201 of 1848.

Appeal from the decision of Baboo Hurgowree Bose, Moonsiff of Russoolgunge, dated the 28th August 1848.

Jugunath Surmah and Suddanund Surmah, Appellants,

versus

Sheik Zukee and Nusseeroodeen *alias* Sheik Nuttoo, Respondents.

RESPONDENTS sued. Sheik Zukee declares himself cultivator of 2 pao, 5 jet, 1 reg, of land in talooka Kamdeb, purchased at auction by Ramsoonder Surmah, while Sheik Nusseeroodeen, who admits being humtaam with Zukee, his brother-in-law, denies tenancy of land belonging to appellants; and they allege that, though they tenanted no land belonging to appellants, Jugurnath Surmah appellant arrested Nusseeroodeen under Regulation VII. of 1799, while Suddanund extorted rupees 4, 4 annas from them, on the 5th of Phalgoon 1253, giving an acquittance without specification of the sum received: hence this suit for the sum extorted, *plus* twice the amount as penalty.

Appellants and their brother, Ramnath Surmah resisted the claim, and pleaded that respondents tenant 1 kear, 2 pao, 4 jet, 5 reg, &c., of the burmooter tenement in the name of Gouree Churrun Bhut, in plots 13 and 15 of the pottah granted (by the collector) to the said Ramnath Surmah; that respondents paid the revenue for preceding years, but withholding that for 1253, Jugunath appellant arrested Sheik Nusseeroodeen under Regulation VII. of 1799, when he voluntarily paid rupees 2, rent and costs, taking an acquittance for the same; and that Ramsoonder Surmah, their enemy, has made up this suit.

The moonsiff (Baboo Hurgouree Bose) held respondents' statement proved by the three witnesses adduced by them: he observed that appellants had not caused issue of the proclamation ordered for the attendance of their witnesses, and had filed no kubooleeut by respondents, and had not specified, in the acquittance, the sum realized by them; and on these, and other grounds, he decreed the claim against appellants and Ramnath Surmah.

Appellants now urge: that the moonsiff did not send for and peruse the record of the suit under Regulation VII. of 1799; that the question of tenancy should have been made the subject of local investigation; and that Suddanund Surmah went to the moonsiff's office with money for issue of the proclamation, but found the suit decided; and that the penalty awarded is illegal.

JUDGMENT.

Appellants state, in their answer, that the land on account of which the rent was realized is the land lying in plots 13 and 15

of their pottah; and Zukee respondent says that the land cultivated by him is in talooka Kamdeb; and respondents' witnesses have sworn that the land of the pottah is not under cultivation, while no evidence on the part of appellants has been adduced. But I am not satisfied, from the evidence on the part of respondents, that the land of the rent in suit is not in appellants' pottah, especially as it appears, from the evidence of two of respondents' witnesses, that the talooka Kamdeb and the burmoter tenement were formerly the property of one person. I am then of opinion that the question at issue must be tested by local investigation.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the suit remanded for local investigation. The price of the stamp of the petition of appeal will be refunded, and the remaining costs will be provided by the moonsiff in his future decree.

THE 24TH FEBRUARY 1849.

No. 205 of 1848.

Appeal from the decision of Baboo Hurgouree Bose, Moonsiff of Russoolgunge, dated the 4th September 1848.

Koodrutoollah, Appellant,

versus

Mahomed Ufzul, Respondent.

RESPONDENT stated that he and his nephew, appellant, jointly bought an old boat for rupees 15, on the 1st of Asar 1253, repaired it at the cost of rupees 25, and let it on hire for rupees 24, half of which he received; and that he sold his share to appellant on the 1st Maugh 1254, for rupees 7 and 8 annas, which appellant agreed to pay in seven days, but has not liquidated: and respondent therefore sues for the price of his share with interest.

Appellant, in answer, admitted the joint purchase as stated, but pleaded that instead of respondent having sold his share, he had purchased appellant's for rupees 7, 8 annas, which he had agreed to pay in eight days, with rupee 1, 6 annas, due on account of repair,—with other immaterial matter.

The moonsiff (Baboo Hurgouree Bose) held the purchase and non-payment of the purchase money, as stated by respondent, proved, and, after noticing that, though appellant had been required to adduce his proof on the 16th of August, he had failed to do so, and the tenor of part of his answer was adverse to the supposition of his having sold his share to respondent, decreed the claim.

Appellant now urges that there was a dispute between the parties concerning the expense of repairing the boat, and the suit was made up in consequence; that he was not allowed sufficient time for the

adduction of his witnesses; and that the two brought forward by respondent are his relations and dependants.

JUDGMENT.

Appellant had nineteen days wherein to adduce his witnesses, but failed to take any measure to compel their attendance; and the evidence of respondent's witnesses, supporting his plaint, is wholly unrebutted, and in my opinion is as consistent with probability as appellant's defence is inconsistent with it,—he, asserting a counter claim, not having taken steps to enforce it.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 26TH FEBRUARY 1849.

No. 145 of 1848.

Appeal from the decision of Baboo Hurgouree Bose, Moonsiff of Russoolgunge, dated the 13th June 1848.

Mahomed Uzeem, Appellant,

versus

Ameer Khan, Respondent.

RESPONDENT sued for rupees 12, 8 annas, loss sustained by him in consequence of appellant not having delivered 250 mats, in the month of Maugh 1254, as per agreement, and for which he had received the price, rupees 5, in advance, on the 19th Poos 1254.

Appellant denied the asserted transaction, and pleaded *alibi*, and that the suit was made up, in consequence of a quarrel between the parties concerning a debt due from respondent's father to appellant.

The moonsiff (Baboo Hurgouree Bose) held the evidence of the witnesses adduced by appellant unworthy of reliance, on account of discrepancies, which he has detailed, and, deeming the transaction declared by respondent fully established by the evidence of his witnesses, but holding the amount of loss not proved, decreed rupees 5, the amount advanced, with interest, against appellant.

Appellant now urges that if the witnesses who attended did not establish his defence, more should have been sent for; and that he wished the account-book of a mahajun and the mahajun himself to be sent for, to prove a payment of rupees 30, on another account, on the date of the alleged transaction with respondent, which would establish the *alibi*.

JUDGMENT.

No mention of the payment to Uzmutoollah is to be found in the record of the suit before the moonsiff; and had such payment been made in mouzah Gulmee Kafun, where appellant has endeavoured

to prove himself to have been on the date of transaction in suit, it would surely have been stated in his answer, and the evidence of the mahajun and exhibition of his account-book would be important to remove the effect of an omission so inconsistent with probability. Moreover, if appellant wished for the evidence of more witnesses, he should have caused issue of summons for their attendance, and not have remained supine in the matter from the 13th June, as he also appears to have been in regard to the alleged claim against respondent, concerning the debt of his late father, on account of which his vakeel cannot now say that any suit has to this day been instituted, —a circumstance adding to the improbability of the defence, which the evidence is, in my opinion, insufficient to support. On the whole, then, I see no reason to question the propriety of the moonsiff's decision in this petty case.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 26TH FEBRUARY 1849.

No. 149 of 1848.

Appeal from the decision of Mahomed Salim, Moonsiff of Sonamgunge, dated the 20th July 1848.

Ramhuree Shah, Appellant,

versus

Neelkant Pal, Respondent.

RESPONDENT sued for the balance due under a bond, executed by appellant, for rupees 100, on the 11th Jyte 1248 B. S., after crediting rupees 50, 14 annas, paid in liquidation, as per endorsement, through Lalchund talookdar, on the 23rd Asin 1250.

Appellant answered, admitting the loan and bond, and pleading that he had paid Lalchund talookdar, respondent's son, rupees 110, on the 23rd of Asin 1250, up to which date the balance, after debiting interest at the rate of rupees 3 *per centum per mensem*, was found to be rupees 155, 4 annas, 9 pie; that he paid respondent rupees 50, on the 2nd Aughun 1251, up to which date the interest was calculated to amount to rupees 63, 4 annas, 3 pie, respondent remitting the balance 13 annas, 4 cowries, 3 pie, and promising to return the bond, which he afterwards declared he could not find, when appellant sent his nephew for it; that respondent subsequently borrowed rupees 125, from appellant's brother, Bhugeerut Shah, solemnly protesting that he had been paid the amount of the bond, in his own favor, that he could not find it, and would never found a suit on it; and that this suit is instituted in consequence of a quarrel with Bhugeerut Shah, and in order to evade the claim which he is about to prefer.

Respondent urges, in reply, that it is a condition in the bond that all payments in liquidation shall be endorsed on it; and that he never borrowed money from Bhugeerut, in whose name, neverthe-less, appellant has fraudulently sued him to avoid the present claim.

The moonsiff (Moulvee Mahomed Salim) held the evidence adduc-ed by appellant discrepant and insufficient, and found the transac-tion, as declared by respondent, proved by his witnesses, who swore to the bond having been read out at the time of execution; and after observing that the bond was admitted, and that it is a condition in it that payments in liquidation shall be endorsed, and that it is not probable that appellant would, as he avers, pay more than the original loan without taking a receipt, he decreed in favor of respondent's claim.

Appellant now urges that he wished to adduce respondent's son and nephew to prove the payments in liquidation alleged by him; that several witnesses had proved his statement; and that he wished to have the evidence of the remainder of the witnesses named in his list, but that they had not been sent for; and that he is now willing to abide by the oaths of respondent and his son and nephew.

JUDGMENT.

Appellant has now expressed his willinguess to abide by the oaths of three persons, whereof respondent is one; but I have no power to put respondent on his oath, and, had he wished for the evidence of the others, he should have caused them to be summoned, but he did not adopt the measures necessary for their adduction, or those which were necessary to adduce such other witnesses named in his list as have not attended; and concurring with the moonsiff in deeming the evidence of the witnesses adduced by appellant unsatisfactory, on account of the discrepancies, and insufficient as opposed to the bond, in which there is a condition that payments in liquidation shall be endorsed, I see no reason to intefere with the decree of the lower court.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 26TH FEBRUARY 1849.

No. 175 of 1848.

Appeal from the decision of Mahomed Moazum, Moonsiff of Nubbeegunge, dated the 12*th August* 1848.

Soolukhunee Dasee and others, Appellants,

versus

Doorpuddee Dasee and others, Respondents.

APPELLANTS, the heirs of the late Shewa Ram Das, sued re-spondents, as heirs in possession of the estate of the late Teluk

Chunder Deb, under a bond alleged to have been executed by the said Teluk Chunder, in favor of the said Shewa Ram, for Sicca rupees 34, 6 annas, on the 14th Poos 1243, with interest. No defence was filed.

The moonsiff (Moonshee Mahomed Moazum) observed, in his decree, that, of the four persons whose names are on the bond, two are dead, while the other two are unable to identify it, and their evidence is replete with discrepancies, detailed by him: and on these grounds he dismissed the suit.

Appellants now urge that the witnesses have proved execution of a bond for the consideration (Sicca rupees 34, 6 annas,) duly paid to Teluk Chunder; that the discrepancies in their evidence are caused by lapse of time, and are not such as to annul it; that the persons sued have made no defence, from consciousness of the justice of the claim; and that if the evidence adduced be insufficient, enquiry can be made among the neighbours of the parties, who are cognizant of the transaction.

JUDGMENT.

The bond is a very stale one, brought forward 11 years and 3 months after its date, and after the person, who is said to have executed it, has been disabled by death from contesting the asserted fact of its execution and from attempting to prove its liquidation. Clearly such a transaction must be viewed with the greatest jealousy: and, as I find it supported only by the evidence of two persons, who cannot identify the bond, and whose evidence discloses discrepancies, and appellants, if they wished to adduce further evidence should have expressed their wishes to the moonsiff, but did not do so, I see no reason to interfere with the decree of the moonsiff.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 28TH FEBRUARY 1849.

No. 6 of 1848.

Appeal from the decision of Mahomed Salim, Officiating Principal Sudder Ameen, dated the 17th May 1848.

Kumla Kant Surmah, Appellant,

versus

Ruttun Bullubh Das, Respondent.

RESPONDENT sued, on the 11th Bysakh 1252 B. S., for rupees 524, annas 6, pies 8, principal and interest due under a bond, dated 24th Bysakh 1236, on which the sum of rupees 198, annas 15, is asserted to have been repaid in twenty-three separate instalments

through Unnund Ram, Sumbhoonath, Sookdeb Ram Shah, Birjoo Ram, and others, the last payment having taken place on the 22nd Sawun 1247.

Appellant denied the transaction, and pleaded that the suit was instituted from motives of enmity, after lapse of more than 12 years from the alleged ground of action; and that the persons, through whom the payments, in liquidation, are asserted to have been made, are under respondent's influence,—with other immaterial matter.

Respondent, in reply, solicited comparison of the signature to the bond in this suit, with appellant's admitted signature on the bond in the suit of Tareenee Dasee and others, No. 614 of the file of the moonsiff of Parkool.

The officiating sudder ameen originally dismissed the suit, principally, because it had not been instituted within 12 years, the ordinary term allowed by Section 4, Regulation III. of 1793; and because the evidence adduced, and proposed to be adduced, seemed insufficient to remove this objection.

On appeal, the suit was remanded, on the 29th August 1846, that the remaining evidence, which respondent wished to prefer might be taken; and in consequence of the abolition of the office of sudder ameen in this district, it was sent to the court of the principal sudder ameen.

The late principal sudder ameen (Rai Radhagobind Shome) dismissed the claim, because two of the witnesses were servants of respondent, because of trivial discrepancies in the evidence of some others, and because the rest had not attended.

On appeal, the investigation was still held incomplete, and the suit was again remanded on the 22nd September 1847.

The officiating principal sudder ameen (Moulvee Mahomed Salim,) on the 17th May 1848, decided that execution of the bond, with admission of the debt by appellant, and liquidation of part of it by his agents reviving the claim, fully proved; and he decreed that appellant should pay respondent rupees 436, 6 annas, 6 pie, 2 krants, with proportional costs and interest, debiting respondent with the balance of costs incurred by appellant, with interest.

Appellant now urges that, though the principal sudder ameen had examined his (appellant's) son, and three other witnesses, they had proved no payment in liquidation by appellant; that the suit would not have been dismissed by the late principal sudder ameen, or remanded by the judge, nor would the examination of other witnesses been solicited by respondent, had the evidence on record previously warranted a decree in respondent's favor, but that, notwithstanding, the officiating principal sudder ameen had made that evidence the ground of such a decree; and, after commenting on the smallness of the instalments averred to have been paid on a bond for rupees 300, he prays that what he has stated, in appeal, and the evidence of the four witnessess last examined, may be duly considered.

JUDGMENT.

No opinion has hitherto been given by this court, whether the evidence adduced by respondent is sufficient or not, and I now proceed to consider, on examination of the whole of the evidence, whether the deed in suit was executed as declared by him, and, if so, whether the claim, preferred under it, is barred by lapse of time.

Appellant has alleged, in his answer, that the suit is founded on enmity, raised by a suit under Act IV. of 1840, in which he had been employed as an attorney, but obviously this ground, which is not mentioned in the petition of appeal, is extremely improbable. The agency of attorneys does not generally provoke suits against them; and no special reason is shewn why appellant's agency should form an exception to the general rule. Moreover, it is extremely improbable that respondent acting fraudulently, would concoct a suit so encumbered with difficulties as this has been to such an extent that it has been twice dismissed. This plea of enmity then seems of no effect and null; and execution of the bond in suit not only appears to me probable, from several circumstances, which I need not detail, but attested according to the requirements of the law and proved beyond doubt. The two surviving witnesses, one of whom has identified the bond, have sworn to the loan it represents, on the date which it specifies; and as appellant's vakeel, in answer to my question this day, has denied that his client has had any transaction with respondent or his father, the bond which these witnesses have sworn to have been executed, can, according to this admission of the vakeel, be no other than the bond in suit; and payments, in liquidation, by appellant's direction, continuing the claim beyond the 12 years ordinarily allowed by the law of limitation, appear to me satisfactorily shewn to have been made in 1245 and 1246. Under these circumstances, the decree of the principal sudder ameen appears to me just and proper.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decreee of the officiating principal sudder ameen affirmed with costs.

ZILLAH TIPPERAH.

PRESENT: T. BRUCE, ESQ., JUDGE.

THE 14TH FEBRUARY 1849.

Case No. 12 of 1849.

Regular Appeal from a decision of Moonshee Ali Newaz, Moonsiff of Ameergaon, dated 30th December 1848.

Kumlakaunth Chukurbutty, (Defendant,) Appellant,

versus

Pothee Lal, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 33.

This is a suit for the recovery of the balance of 100 maunds of rice, deliverable under a contract.

The moonsiff gave judgment for the plaintiff *exparte*. He held that the usual notice and proclamation had both been proved by witnesses to have been duly served. But, on referring to the record, it appears that the witnesses make no mention of the notice; and that their statement, relative to the proclamation, is opposed to the certificate of service which accompanies it, the witnesses deposing that it was affixed to the residence of Kanthsingh, one of the defendants, and the certificate declaring that it had been affixed to the residence of Kumlakaunth Chukurbutty, another of them. It appears, moreover, from the plaint, that these defendants reside not only in different mouzahs, but in different pergunnahs. Under these circumstances, the decision of the lower court must be annulled, and the case remanded for investigation *de novo*. The value of the stamp, on which the petition of appeal is written, will be refunded.

THE 15TH FEBRUARY 1849.

Case No. 170 of 1848.

Regular Appeal from a decision of Moulvee Imdad Ali, Sudder Moonsiff, dated 27th June 1848.

Jummah Gazee, (Defendant,) Appellant,

versus

Mahomed Sanee and Jaun Mahomed, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 13-8-6.

This is an action for the recovery of arrears of rent, for the years 1252 and 1253 B. S., instituted by farmers against a ryut.

The defendant admitted that he was liable for rent at the rate specified by the plaintiffs, but pleaded payment in full, and filed receipts to that effect.

The defendant having neglected to produce his witnesses, the moonsiff gave judgment for the plaintiffs, rejecting the receipts as inadmissible, on the ground that several of the latter entries were forgeries.

An appeal is preferred by the defendant, on the plea that he was not allowed sufficient time for the purpose of producing his witnesses: that the moonsiff had done nothing with a view to cause the attendance of some of them, on whom a subpœna had been served, and who had acknowledged the service in writing: and that he (defendant) had stated, in his answer, in the lower court, that the receipts had been written by different persons.

None of these pleas are good. With regard to the non-attendance of the witnesses, it appears that they all evaded the summons of the court, and that the defendant took no further steps with a view to their attendance, although the nazir's return was filed on the 31st May, and the suit was not decided until the 27th June. But the entries to which the moonsiff takes objection, are too palpably forgeries, to render the attendance or non-attendance of the witnesses a matter of the slightest importance.

With regard to what appellant states relative to his answer in the lower court, it appears that what he did say was, that the receipts for the rent of 1253, in which there are no less than thirteen entries, were written by one party, and the remaining receipts by another party—not that any particular entries in the various receipts had been written by one person, and the other entries in the same receipts, by another person: but the forged entries are not confined to one receipt.

Nearly a month after the appeal had been preferred, appellant presented a petition, stating that the nazir's return to the effect that his (appellant's) witnesses were not to be found, was a false return, some of them having been duly served with the summons,—and offering to prove that such was the case. He was allowed to bring witnesses to establish the fact; but I do not place any faith in their testimony. One of the three denies the service; and the plea was not advanced in the lower court; it is doubtless advanced now, only with a view to make it appear that appellant had stated correctly, in his petition of appeal, that a different return had been made by the nazir.

According to the evidence of the plaintiffs' witness, Bhooda Gazee, the party by whom the receipts were written, the balance of rent due from the defendant (appellant) exceeds the amount claimed.

I affirm the moonsiff's decision; appellant and respondent to pay their own costs in appeal, respondent having appeared without having been summoned.

THE 20TH FEBRUARY 1849.

Case No. 193 of 1848.

Regular Appeal from a decision of Moonshee Ali Newaz, Moonsiff of Ameergaon, dated 2nd August 1848.

Pran Ghazee and Beenud Ghazee, (Defendants,) Appellants,

versus

Tona Ghazee and Ledah Ghazee, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 24-6.

This suit was instituted on the 22nd February 1848, for the recovery of an exaction of rent, over and above the amount specified in the plaintiff's kubooleeut; with damages equal to double the amount exacted.

The plaintiffs are ryuts: the defendants are three under farmers and their gomashta.

The defendants distrained and sold the plaintiffs' property, in realization of a claim for rent, at the rate of rupees 10-5 *per annum.*

The plaintiffs appealed to the civil court, on the ground that they were only liable at the rate of 1 rupee *per annum,* under a pottah for 8 gundahs and 3 cowrees of land, granted to them by the defendants on the 25th Phalgoon 1256 Tipperah; and that the amount for which they were thus liable had been paid.

Of the defendants, two of the under farmers and the gomashta pleaded that the plaintiffs were liable at the rate of rupees 10-8 *per annum,* under a kubooleeut for 4 kanees and 10 cowrees of land executed by the plaintiffs on the 23rd Bhadoon 1256. The other under farmer confessed judgment.

The moonsiff gave judgment for the plaintiffs, being of opinion that they had established their case by the evidence they had adduced, viz. the pottah of 25th Phalgoon, a dakhila, or receipt, for the rent due under it, and the evidence of six witnesses. He rejected the kubooleeut filed by the defendants, as a fabrication, for several reasons, the principal of which were discrepancies in the evidence of the subscribing witnesses; the appearance of the document itself, which shewed that it had been recently written; the fact that it was stated in the application for the sale of the property, and also in the jumma-wasil-bakee, which formed the ground of the attachment, that the defaulters had not executed written engagements for the rent; and that it was proved by the local investigation of an ameen, in opposition to the evidence of the defendants' witnesses, that the extent of land in the plaintiffs' occupation was little more than 14 gundahs. The moonsiff held that the trifling excess of land

reported by the ameen, as compared with the quantity specified in the plaintiff's pottah, did not affect the merits of the case, the point at issue being whether the kubooleeut put in by the defendants was or was not genuine.

In appeal, it is urged that the deputation of an ameen, in such a case as the present, was unnecessary; and that the pottah on which the moonsiff's decision is founded, was not proved. In support of the former point, a decision of the Sudder Court, in special appeal from a decision of the zillah court of Rajshahye, page 65 of the Sudder Court's Decisions for 1847, is quoted, but on what grounds, I cannot discover. In the case cited, the lower courts reversed a summary award under Regulation VII. of 1799, because disputes existed relative to the proprietary right in the land; and the Sudder Court held that they ought to have decided "as to the genuineness of the kubooleeut before them, and the existence of balance thereon." The plea that the plaintiffs' pottah was not proved, is erroneous.

The decision of the lower court is affirmed, with costs. It ought to have stated the reason which led the moonsiff to award a smaller amount of damages than the amount claimed: but the plaintiffs have raised no objection to the award.

The 20th February 1849.

Case No. 192 of 1848.

Regular Appeal from a decision of Moonshee Ali Newaz, Moonsiff of Ameergaon, dated 2nd August 1848.

Pran Ghazee and Beenud Ghazee, (Defendants,) Appellants,

versus

Tona Ghazee and Ledah Ghazee, (Plaintiffs,) Respondents.

Suit laid at Company's rupees 5-10-6.

This is a suit for the recovery of an exaction of rent, over and above the amount specified in the plaintiffs' kubooleeut; with damages equal to double the amount exacted.

The circumstances of the case, the parties, the kubooleeut on which the right of attachment is founded, and the purport of the decree, are the same as in Case No. 193, decided this day, the only difference being, that the balance of rent claimed by the distrainer was for a later period of the year than in the other suit. The same order will issue.

THE 24TH FEBRUARY 1849.

Regular Appeal from a decision of Gopeenath Moetro, Moonsiff of Soodharam, dated 19th August 1848.

Case No. 203 of 1848.

Mahomed Sumeerooddeen, (Plaintiff,) Appellant,

versus

Mahomed Kazim and Mahtab, (Defendants,) Respondents.

Case No. 212 of 1848.

Mahomed Kazim, (Defendant,) Appellant,

versus

Mahomed Sumeerooddeen, (Plaintiff,) Respondent.

THESE are appeals from one and the same decision.

The plaintiff, as purchaser of an independent talook at a sale for the recovery of arrears of Government revenue, instituted this suit to enhance the rent of 3 kanees of land to the pergunnah rates, from the date of a notice issued under Regulation V. of 1812.

Of the defendants, Mahomed Kazim and Mahtab, the former alone appeared. He claimed only a part of the land, but pleaded a right to hold that portion of it at a fixed rate of Sicca rupees 2-4 per kanee, under a grant made by a former proprietor, in the year 1169 B. S., corresponding with the year 1762. He filed a document, purporting to be the original sunud, and a large number of receipts for rent at the rate specified, dating from 1170 to 1249, B. S.; but, with the exception of copy of a roobakaree of the register's court, put into prove that the cazee, by whom the sunud purports to have been attested, actually held the situation of pergunnah cazee about 30 years after the date of the sunud,—with this exception he adduced no other evidence of any kind: he did not even prove any of the receipts.

The moonsiff dismissed the claim as regards a portion of the land in favor of a third party, and gave a decree for the remainder, at the rate of 5 rupees per kanee, after deducting 20 per cent. for profits and expenses of management. He rejected the sunud and the receipts, as not having been proved; adding that it appeared from a summary decision of the revenue court that the party, by whom the receipts for 1248 and 1249 were said to have been granted, was not, as set forth in the receipts, the lessee of the talook during those years.

From this decision both parties appeal: the plaintiff, on the ground that the rates adopted by the court below are not those of the pergunnah, and that he is entitled to the rent of the land without any deductions: the defendant, Kazim, on the grounds pleaded before the moonsiff, and further, that land belonging to other talooks has been included in the measurement, and that, in fixing the assessment, the necessary deductions for waste land, &c. have not been made.

I entirely concur with the court below, as to the propriety of rejecting the proofs put in by the defendant. It is only necessary to see them, to be satisfied that they are fabrications of recent date. The sunud bears what purports to be the seal of the pergunnah cazee; and a person of the name appears to have held that situation 30 years after the date on the sunud; but the impression is that of a very rude seal. It would require evidence of a widely different character to give any force or weight to such a document, supported by such proofs as the receipts.

I am of opinion, however, that plaintiff is entitled to rent from the defendants, free of all deductions for profits or expenses of management, and further, that the rent, instead of being assumed at the arbitrary rate of 5 rupees per kanee, ought to have been determined with reference to the existing local rates, as ascertained by the ameen. The plaintiff might have brought a suit to eject the defendants from the land altogether; but he only sued for an enhancement of rent at the pergunnah rates, and, the plea of the defendants having been rejected as being founded on fabricated documents, he is entitled to all he asked for.

With regard to defendants' pleas in appeal, I am of opinion that the waste and unculturable land ought to have been deducted from the assessable area; but the plea that land belonging to other talooks has been included in the measurement, is of too vague and indefinite a nature to be acted upon.

The decree of the court below will be modified accordingly; each party to pay his own costs of appeal. That part of the moonsiff's order, which directs the plaintiff how to proceed, in the event of the defendants neglecting to enter into engagements for the rent within a specified period, is also annulled, as supererogatory.

THE 24TH FEBRUARY 1849.

Case No. 209 of 1845.

Regular Appeal from a decision of Mahomed Amah, late Moonsiff of Ameergaon, dated 13th September 1845.

Anund Mye, widow of Kalleechurn Deo, and Tarachand Deo, (Plaintiffs,) Appellants,

versus

Mahomed Lummee and Mahomed Tumeez, (Defendants,) Respondents.

THIS case and No. 245 have been twice remanded by the Sudder Court, in special appeal from decisions of the principal sudder ameen, passed in regular appeals from decisions of the moonsiff of Ameergaon.

The land in dispute, in the two cases, forms part of an independent talook, and consists of only 5 kanees. The point for adjudication is whether, as stated by the defendants (in this suit,) it came into their possession by purchase, from the plaintiffs, in 1228 B. S., or

whether, as affirmed by the plaintiffs, it was only mortgaged to the defendants in 1228, and subsequently, viz. in 1234, after an adjustment and settlement of accounts, leased to them for eight years together with some other land.

The land is in the immediate occupation of two tenants, Ikhtear Manjee and Shumseer Manjee. Against the property of these tenants, process of attachment was taken out by the defendants in two separate cases, for arrears of rent on account of 1244 and 1245. To set aside this attachment, the tenants instituted two suits in the civil court, alleging that they were tenants of the plaintiffs. The suit of Ikhtear Manjee was dismissed, on a point of law, and that of Shumseer Manjee decreed; the actual result being, that one moiety of the land was decreed to the plaintiffs, and the other to the defendants.

The present suits were then instituted in the moonsiff's court, by the plaintiffs, to establish their right to the land in the occupation of Ikhtear Manjee; and by the defendants to establish their right to the land occupied by Shumseer Manjee.

The moonsiff decided, after a very careful investigation, that the transaction of 1228 was a *bonâ fide* sale, and not mortgage: he consequently gave judgment against the present plaintiffs, and in favor of the present defendants, in their respective suits.

In appeal from these decisions of the moonsiff, the principal sudder ameen dismissed the claims of both parties; thus leaving matters in the anomalous position in which they were placed by the conflicting decisions in the suits brought by the tenants against the attachment. The principal sudder ameen's decisions were, however, annulled by the Sudder Court, after admission of special appeals, and the cases remanded for re-investigation. On the 23rd May 1848, the principal sudder ameen gave judgment for the plaintiffs in the present suit, and for the same parties, as defendants, in the other, thus reversing the decisions of the moonsiff. On the 12th September 1848, special appeals were admitted by the Sudder Court, from the principal sudder ameen's decisions of the 23rd May, which decisions having been annulled as incomplete, the cases were remanded for investigation *de novo* by the zillah court.

The plaintiffs (in the present suit) state that the transaction of 1228 was a conditional sale, or mortgage, the land being redeemable in seven years. They admit that a bill of sale was executed by the mortgagers, in favor of the defendants, but they allege that another instrument, which they designate an *ikrar*, was executed at the same time, by Hashim, the defendants' father, by which the transaction became a conditional sale. They state that this *ikrar* having been lost, another was executed in lieu of it by Hashim, in the year 1231: and that a settlement of accounts between the parties having taken place in 1234, when it appeared that the plaintiffs were indebted to the defendants in the sum of rupees 1,155, a talook was transferred by the former to the latter, at a valuation of rupees

900, in part payment of the debt, and the balance provided for by the lease of the land in dispute, and some other tenures, to the defendants, for eight years; a *farkhutee*, or acknowledgment, that the bill of sale of 1228 could not be found, being at the same time executed by Hashim. The plaintiffs state further, that they obtained possession of the lease land, on the expiration of the lease, and subsequently sold portions of it to two different parties.

Besides chelans, receipts for rent, accounts, and other documents irrelevant to the point at issue, inasmuch as they only tend to prove that the plaintiffs still possess a proprietary right in the talook, a point which is not denied, the plaintiffs file what purports to be the original *ikrar* of 1231; the *farkhutee* of 1234; and a kubooleeut purporting to have been executed by Hashim as lessee, in favor of the plaintiffs as lessors, dated 1234. The case may be said to hinge on these three documents; for I place no faith either in a ryuttee pottah, said to have been granted to the tenant Shumseer, by Hashim, in his capacity of lessee; or in an *urzee*, submitted to the collector, by a subarakar, of date subsequent to the cause of action.

The *ikrar* I utterly reject, as did the moonsiff, who, in his separate proceeding of 13th September 1845, pronounced it to be a forgery. The date which it originally bore, was evidently the 15th Srawun 1231; but that date has been changed into the 25th: the reason of which is explained by a reference to the stamp vendor's endorsement on the back of the document, which shews that it only left his hands on the 22nd of the month, or seven days after the date on which the *ikrar* originally purported to have been executed. But further, the purport of the *ikrar* is directly opposed to the plaint; and not only so, but to all credibilty. According to it, the first *ikrar*, by which the sale became conditional, was not executed until nearly two years after the transaction of 1228, the period of redemption dating from that of the *ikrar*. The plaint sets forth that it was executed at the time of the original transaction: and it is incredible that, if executed at all, it should have been executed at any other time. Again, if the *ikrar* were in existence in 1234, when the settlement of accounts and claims took place, and all deeds in the hands of the parties were released, it ought to have been given up to the opposite party: how it remained in the hands of the plaintiffs, is not explained. But besides all this, it is inadmissible as evidence, being on a stamp of inadequate value.

The *farkhutee* of 1234 was also rejected by the moonsiff, in the separate proceeding of 13th September 1845. It bears the names of four witnesses, but none were brought to prove it. The plaint states that it was executed by Hashim, but it bears the names both of Hashim, and of his sons, the defendants; and, in opposition to the account of it given in the plaint, it makes no mention either of the bill of sale of 1228, or of any other document in particular. It is vague and indefinite, and does not even allude to the transaction of 1228.

The above two documents having thus been rejected, it is perhaps superfluous to go into the merits of the farming kubooleeut of 1234. Suffice it to say that the evidence of the two subscribing witnesses brought to prove it, as given before the moonsiff, is so opposed to the evidence of the same witnesses, as given before the principal sudder ameen, that it must necessarily have been viewed with the greatest suspicion even under the most favorable circumstances, —much more when brought to corroborate such proofs as the *ikrar* and *farkhutee.*

The only evidence adduced by the plaintiffs, to prove that the land reverted to them after the expiration of the lease of 1234, consists of a ryuttee pottah, purporting to have been granted by them to Shumseer Manjee in 1242, and of the counterpart kubooleeut. But these documents were filed at different times, and were evidently drawn out at different times, as a comparison of the contents shews. But even admitting them to be genuine, so far as regards their execution, they would be quite insufficient to establish the plaintiffs' title to the land. No attempt is made to prove the plea that the plaintiffs, after regaining possession of the leased land, sold portions of it to two different parties.

The defendants file an authenticated copy of the bill of sale of 1228, supporting it by an *amuldaree,* or notice to the ryuts, a *doul,* or grant of the land, a *kharijputtee,* or deed declaratory of the separation of the land in dispute from the rest of the talook, and other documents, nearly all of which bear the signature of the plaintiffs. The original bill of sale is not forthcoming, although it was filed at an earlier stage of the proceedings: there is some reason to think it has been abstracted from a record of which it formed a part; but that matter is under investigation; and the absence of the document, as regards the merits of the suit, is of little moment, its execution not being denied.

The plaintiffs having entirely failed in the attempt to prove their case, the moonsiff's decision of the 13th September 1845 must be affirmed, and the appeal dismissed, with all costs incurred in the courts of the judge, principal sudder ameen, and moonsiff.

THE 24TH FEBRUARY 1849.

Case No. 245 of 1846.

Regular Appeal from a decision of Mahomed Amah, late Moonsiff of Ameergaon, dated 9th September 1846.

Tarachand and Shumseer Manjee, (Defendants,) Appellants,

versus

Mahomed Tumeez and Mahomed Lummee, (Plaintiffs,) Respondents.

THIS is case No. 245 referred to in the decision of case No. 209, decided this day. For the reasons set forth in that judgment, the moonsiff's decree is affirmed, with costs. The defendant, Shumseer, although only a tenant, has acted as a principal from the first.

ZILLAH TIRHOOT.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

THE 13TH FEBRUARY 1849.
No. 294 of 1847.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, first Principal Sudder Ameen, dated 5th April 1847.

Mohunt Balmakoond Doss, (Plaintiff,) Appellant,

versus

Ramloll and Shamloll Jha and twenty others, (Defendants,) Respondents.

IN this action, instituted on the 10th July 1846, the plaintiff sought to establish his right to possession of 10 beeghas of minhye land in mouzah Rampore, pergunnah Tirsut, the suit being laid at Company's rupees 2,649-13-2, or eighteen times the produce of one year, with mesne profits from 1244 to 1248 Fuslee, both principal and interest. He alleges that, prior to the accession of the British Government, Maharajah Pertaub Singh gave to his ancestor, Mohunt Sahibram Doss, three separate grants of bishunpeereet land in mouzah Rampore, first 105, second 165, and third 10 beegahs, and that the Maharajah gave him a sunud on the 5th Sawun soodee 1171, Fuslee. Afterwards, on the maliks, in 1192 Fuslee, disputing his right to so much land, the then canoongoe, chowdrees, and shareholders measured and enclosed all three parcels. In 1204, Sahibram Doss died, and was succeeded on the guddee by Ram Bhudder Doss, who was the plaintiff's grandfather, and who before his death in 1222 made over by hibbanamah, or deed of gift, in 1220 Fuslee, the whole of his property to Mohunt Beekum Doss, the plaintiff's gooroo. The latter having by a similar deed of gift given the plaintiff the disputed 10 beegahs and other lands, and the parcel which comprised 165 beegahs having been resumed, a settlement was first made with the maliks, but eventually with the said Beekum Doss, and the former, while in possession, having also forcibly possessed themselves of these 10 beegahs, ultimately relinquished them, when, on the 165 beegahs being released from the demand of Government, a settlement was concluded with Beekum Doss. For the profits enjoyed by the maliks, while in possession, a suit was instituted by the plaintiff, on the 14th July 1842, which was dismissed on the 29th December 1843, the decision being upheld, on appeal, by the additional judge on the 4th June 1845, it being, however, stated in the decision of the latter that the judgment then passed was no bar to the institution of another suit to establish his right by possession.

The defendant, Ramloll, and nine others, answer that a suit having previously been brought, which, after trial before both parties, ended

in the dismissal of the plaintiff's claim both in the courts of first instance and appeal, the same suit cannot be brought again; and that the sunud alleged to have been given by Maharajah Pertaub Singh was fabricated and forged. Had it been a genuine deed, it would assuredly have been produced when the resumption case regarding the 165 beegahs was pending, and still more when, in a similar case respecting the 105 beegahs, the claim of Government was dismissed on the 26th December 1841; and if these 10 beegahs were not included in the latter quantity, why did plaintiff's ancestor allow himself to be dispossessed, without objection or opposition or without bringing a case under Act IV. 1840?

The answer of Shunker Dutt and Shoomrun Singh, defendants, is in support of that of those preceding. They plead in addition that a suit for minhye land must be laid at the value of such land. Moreover, reckoning from the date of the alleged sunud, the statute of limitations has been exceeded. The claim too for wasilat is against several persons, but without any specification of the liability of each.

The other defendants did not appear.

The principal sudder ameen dismissed the suit because the plaintiff produced no new proof beyond that already given in the suit decided against him on the 29th December 1843. Besides which, in the missil of the lakhiraj case of mouzah Pucharree, received from the collectorate, in which was filed a copy of the hibbanamah executed by Mohunt Sahibram to Ram Bhudder Doss, the total quantity of land belonging to mouzah Rampore is stated to be 105 beegahs; also in a petition presented to the collector, on the 3rd March 1828, agreeably to a requisition of the revenue authorities requiring all minhyedars to file a statement of their lands, no mention whatever is found of the particular 10 beegahs in dispute. Under these circumstances, as the plaintiff's own papers do not establish his right, the alleged sunud on plain paper, and which he might at any time have fabricated, cannot be considered authentic or trustworthy.

It is contended in appeal that it is not the case, as made out by the principal sudder ameen, that the two cases are the same, as the suit formerly instituted was for mesne profits only; while in regard to the assertion that no new proof has been adduced, there are the urzee of Monohur Lall, canoongoe, in which these 10 beegahs are mentioned, and the copies of the depositions of Bukht Rae, and others, maliks of Rampore, taken by Doorgapershad, tehsildar of khas muhals, four account papers signed by Piyaree Lall, putwarree, from 1244 to 1248 Fuslee, also three khusrehs of measurement papers by a butwarra ameen deputed by the collector. Moreover, in the copy of a petition presented to the collector by Tuwukul Doss, who, having first laid claim to, afterwards relinquished them, these 10 beegahs were stated to be the property of Mohunt Sahibram Doss, the appellant's ancestor, as is also apparent from the ikrarnameh of Jyram Doss, attested by the cazee's seal and regis-

tered. Besides, in this case, in which mofussil investigation was necessary, the principal sudder ameen, having first approved of and ordered local enquiry, and having, one day before passing his final decision, required the appellant's pleader to deposit the necessary remuneration for an ameen, did nevertheless eventually decide the case without any local enquiry.

JUDGMENT.

I concur in opinion with the principal sudder ameen that the plaintiff has altogether failed to establish, by trustworthy documentary proof, his just and legal right to the 10 beegahs of land for which he sued; and the more so as, in addition to the 10 beegahs in question not being specified in Mohunt Sahibram's deed of gift to Ram Bhudder Doss, by whom they are said to have been given to Beekum Doss, from whom the plaintiff alleges that he received them, the latter has not only not produced the deed of gift by Ram Bhudder Doss to Beekum Doss, but he admits that the 10 beegahs in dispute are not therein inserted. Under these circumstances I agree with the principal sudder ameen in thinking that the alleged sunud, which the plaintiff produces as the foundation of his claim, cannot be considered genuine or trustworthy.

The decision of the principal sudder ameen is upheld, and the appeal dismissed with costs.

THE 13TH FEBRUARY 1849.

No. 668 of 1844.

Original Suit.

Eshree Dutt Chowdhree and six others, (Plaintiffs,)

versus

Shunker Dutt Jha and two others, (Defendants.)

THIS action was brought by the plaintiffs as 8 and 6 annas shareholders of Puttee Karunj, pergunnah Shahjehanpore, in the court of the Durbungah moonsiff, on the 1st August 1844, to recover from the defendants, as kashtkars, or cultivators, of 2 beegahs and 10 cottahs of land in that mouzah, the sum of Company's rupees 88-11-7½, being principal and interest of arrears of rent from 1241 to 1251 Fuslee, but was transferred to this court to be heard at the same time with three other suits, regarding rent of the same (for former years) and similar l[illegible]e same mouzah, which were pending in appeal at the time, but have been since decided.

The plaintiffs claimed rent for 1 beegah 16 cottahs of rice land at the rate of 3 rupees per beegah, and for 14 cottahs for rubbee crops in mango topes, at the rate of 2 rupees 8 annas per beegah.

The answer of the defendants is, that this suit, though ostensibly for arrears, has in reality been only instituted by the plaintiffs with a view of establishing a higher rate of rent, and that, during a period of seventy-five years, they and their ancestors have held the land in question, and have never paid more than at the rate of 5 annas per beegah.

The suit was decided by the late judge on the 30th May 1845, who gave the plaintiffs a decree for arrears at the rate of 5 annas per beegah—the plaintiffs having failed to rebut their opponents' defence by adducing proof that the land in question had ever paid more than that rate; but as the decree did not specify the precise amount decreed, and it appeared that the plaintiffs had not been allowed a reasonable time to file their proofs, the case was remanded for re-trial, on special appeal, by the Sudder Court's order of the 7th July 1846, since when it has remained pending agreeably to a petition of the plaintiffs, praying postponement of its decision until the passing of final orders in other cases relating to the same cause of action specially appealed, all of which have since been disposed of by the Sudder Court's rejection of the special appeal preferred in each.

JUDGMENT.

The plaintiffs having failed to bring forward other proof in support of their claim than that already adduced and on the record, and the rate of rent of the land in question having already been fixed at 5 annas in the decision of this court of the 30th March 1845, in the appealed case of Kumlaput *versus* the same Shunker Dutt Jha and others, which decision has not been reversed, the judgment in this suit must be conformable thereto.

I accordingly decree this case in favor of the plaintiffs, who will receive from the defendants arrears of rent at the rate of 5 annas per beegah—costs being charged to the defendants in proportion to the extent to which the plaintiffs have established their claim.

THE 16TH FEBRUARY 1849.

No. 490 of 1848.

Regular Appeal from a decision of Syed Muneeroodddeen Hossein, Moonsiff of Mowah, dated 8th July 1848.

Musst. Beebee, Defendant, (Appellant,)

versus

Baboo Konye Loll, (Plaintiff,) Respondent.

THIS was an action brought by the plaintiff on the 15th April 1848, to recover Company's rupees 130-2-2, being principal and

interest of collections made by a suzawul in the 6 anna, 14 dam, 1 cowree share of mouzah Rajapakur, chukla Gurjoul, pergunnah Bissareh, and included in the original suit both the defendant as malik, and Jellaloodeen as thikadar, the latter however not having appealed.

The defendant, Musst. Beebee, had conditionally mortgaged the above property to the plaintiff on the 16th November 1844, or 21st Kartick 1252 Fuslee, in consideration of Company's rupees 9,001. The said property having been let in farm on the 5th of Kartick 1250 Fuslee, Musst. Beebee took from the plaintiff in cash 2,601 rupees, leaving with him in deposit 7,000 rupees (zur-i-peshgee) due to Jellalooddeen thikadar, in order that when the thika lease should expire, the plaintiff, Konye Loll, should pay the thikadar his peshgee and take possession. She also took an agreement from her farmer, by which he consented to pay the farming rent to the mortgagee from Aughun 1252 Fuslee. When, however, the time for payment came, the farmer objected that 152 rupees had been collected by a suzawul deputed in Assin of that year, in consequence of which Jellalooddeen gave another agreement on the 27th Bysakh 1253 F. S., consenting, in the event of Musst. Beebee objecting to pay that sum, and the mortgagee having to sue for it, to prove its having been collected by the suzawul, or failing that to make it good himself. The plaintiff accordingly gave him credit for that sum in the jumma-wasil-bakee of 1252 F. S. There remained, however, two months for which the malik had to receive from the farmer prior to the mortgage, which took place in Aughun, viz. rupees 51-14-4, for the kists of Assin and Kartick, which sum deducted from the 152 rupees collected by the suzawul leaves the balance of rupees 100-1-8, the principal, with interest, now sued for.

Neither of the defendants appeared to defend the action, and the moonsiff passed an *exparte* decree against them both.

Musst. Beebee appealed, on the ground that she had given the thikadar credit for the sum collected by the suzawul in the jumma-wasil-bakee for 1251 F. S., as proved by that account attested by the seal and signature of the thikadar. Besides, the ikrarnameh was conditional, and stipulated that the thikadar would either prove the amount collected by the suzawul, or make it good himself. Now the thikadar has given no proof whatever, and he ought to be made responsible for the demand.

JUDGMENT.

It was incumbent on the moonsiff to call on the plaintiff to adduce proof as to the thikadar having fulfilled, or failed to fulfil, the conditions of his agreement regarding the suzawul's collections, and his having neglected to do so renders his investigation imperfect and incomplete. The moonsiff's decision is, therefore, reversed, and the suit remanded for re-trial with reference to that omission, and the usual order will issue for refunding the value of stampt paper.

THE 16TH FEBRUARY 1849.

No. 472 of 1848.

Regular Appeal from a decision of Cazee Mahmood Allum, Moonsiff of Coylee, dated 14th July 1848.

Boonyad Singh, (Plaintiff,) Appellant,

versus

Asman Singh, Bhugwan Singh, Soonphool Singh, and Surbun Singh, sons of Gouree Singh, deceased, and Munniar Singh, (Defendants,) Respondents.

IN this suit, instituted on the 25th February 1848, the plaintiff sought to obtain possession and have his name recorded on the 1 anna share of mouzah Koondlahee Mansingh, pergunnah Teelokchawur; action being laid at Company's rupees 57-3-0, being three times the sudder jumma.

It appears that the plaintiff and the defendant Gouree Singh had conditionally mortgaged each 1 anna of their respective shares in the above mouzah, to one Jyram Tewary, for Sicca rupees 122, by kutkubalah, dated the 6th Bhadoon sanee 1240 Fussily, and after the death of Gouree Singh, and the sale becoming absolute, the defendant Munniar Singh brought an action, claiming the property by right of pre-emption. On this, the plaintiff paid to the said Jyram Tewary, rupees 122, as the price of his own and Gouree Singh's share, and, receiving back the kubalah, filed an answer in the pre-emption suit; and the moonsiff, excluding or deducting the share of 1 anna, belonging to the plaintiff, gave Munniar Singh a decree for the 1 anna share of Gouree Singh, which decision, however, was reversed on the appeal by the judge. Notwithstanding this, the sons of Gouree Singh and Munniar Singh collusively refuse to give him possession or to allow his name to be recorded on the 1 anna share of Gouree Singh.

The heirs of Gouree Singh answer by admitting the justice of the plaintiff's claim, but Munniar Singh did not appear.

The suit was dismissed by the moonsiff, with reference to the tenor of the Circular Order, No. 35, of the 25th November 1847, he being of opinion that, in suits in which judgment is confessed, the claim must, confirmably to the Circular quoted, be established by the evidence of witnesses and other proof, whereas the plaintiff, having failed to produce his witnesses, rests his proof only on the fysileh in the former suit.

As appellant, the plaintiff urges that the validity of the kubalah had been established both in a court of first instance and appeal, and the moonsiff ought therefore to have decided the case with advertence to the judge's decision. He (the appellant) did not seek a decree on an ikbal dawa only, having filed a fysileh in support of his claim.

Judgment.

The moonsiff's decision is based on a misapprehension of the Circular Order he has cited. That order rules that suits shall not be decided on confessions of judgment simply or only, and without other proof. In this suit there is other and good and sufficient proof of the justice of the plaintiff's claim. Reversing, therefore, the decision of the moonsiff, I remand the suit for re-trial, directing at the same time the usual refund of the value of stampt paper.

The 19th February 1849.

No. 697 of 1847.

Regular Appeal from a decision of Moulvee Mohamed Mohamid, Additional Principal Sudder Ameen, dated the 7th December 1847.

Futtehchund Sahoo, and after his demise, his wife, Sheodehee Koonwur, (Defendant,) Appellant,

versus

Sheosuhye, and after him, Musst. Jotik and Musst. Kulbuntee, grandmother and mother and guardians of Sungessur Dutt, minor, (Plaintiffs,) Respondents.

This was an action brought by the plaintiff, Sheosuhye, on the 23rd October 1846, to recover the sum of Company's rupees 4,266-10-8, principal and interest, agreeably to a shirakutnamah, or deed of partnership, dated the 12th Poos 1243 F. S., or 16th December 1835, under the following circumstances.

The defendant, Futtehchund Sahoo, a muhajun, had to recover rupees 11,000, balance of account as per khata buhee, from one Musst. Mynah Koonwur, from whom she also took in ready cash rupees 4,500, of which latter sum rupees 2,000 belonged to one Foujdar Singh, in satisfaction of payment of which sum total of rupees 15,500, the mussamat mortgaged mouzah Bukaree, pergunnah Tirsut, &c., and on the 9th Chyte 1241 F. S. accordingly executed a bhurnanamah, or deed of mortgage, and Futtehchund Sahoo paid to Foujdar Singh, from the produce of the property mortgaged, the interest accruing on his rupees 2,000, up to 1242 F. S. To provide also for the future payment of the principal and interest of that sum, Futtehchund Sahoo gave Foujdar Singh the shirakutnamah on which this case is founded; agreeing therein to pay the amount with balance of interest. That document Foujdar Singh sold to Sheosuhye, the plaintiff in this case, on the 15th Phalgoon 1243 F. S., or 17th February 1836, the fact of sale being endorsed on the back of the deed, and after the death of Foujdar Singh, his son, Hurree Singh, wrote a separate document on the 7th Maugh 1247 F. S., or 25th January 1840, in acknowledgment of his father's transfer to Futtehchund Sahoo. Subsequently, disputes arose between Musst. Mynah Koonwur and Futtehchund about their money transactions, and the

latter sued the former on the bhurnanamah, (but without conjoining with himself Hurree Singh,) on the 21st August 1839. On this the latter and Sheosuhye came forward as third parties, and filed the shirakutnamah and separate deed given by Hurree Singh. Futtehchund did not *refute* their claims, and as the name of Foujdar Singh was not entered in the bhurnanamah, a decree was given to Futtehchund alone by the additional principal sudder ameen on the 14th April 1841, and, executing the decree, Futtehchund recovered the amount of his claim, but as he did not pay the rupees 2,000 which Sheosuhye had to recover from Foujdar Singh, this suit is instituted by Sheosuhye and Kodye Lall, son of Hurree Singh and grandson of Foujdar Singh, for its recovery with interest.

The defendants' answer is that, as Sheosuhye alleges, having bought the deed from Foujdar Singh, his conjoining with himself Kodye Lall as plaintiff is mere gambling, and renders his suit inadmissible, while in regard to the sale of the deed having only been written on its reverse, he can show by a precedent that such a sale is illegal. The real state of the case is this. Rai Matabram, the deceased husband of Mynah Koonwur, had for a long time had money transactions with the cootee of the defendant, and Foujdar Singh and one Jhoomuk Lall had for a great while been his men of business. Those two persons credited in their own names rupees 4,000, which really belonged to Raie Matabram, viz. rupees 2,000, in the name of each, for which they took a teep from him, and on the death of Matabram, it turned out on a settlement of accounts that he (defendant) had to receive from Matabram rupees 11,500, and on his demanding payment from the widow, Mynah Koonwur, she, instigated by those persons and through their agency executed the bhurnanamah, or deed of mortgage, for rupees 15,000, they having included therein their own alleged rupees 4,000, and they also took account of what was realized from the mortgaged property. Eventually, Mynah Koonwur found out the malversation committed by Foujdar Singh and Jhoomuk Lall: on confronting them they confessed: but as she could not claim the whole rupees 4,000 as her own, without the risk of other heirs of her husband also claiming a share, she induced him (defendant) to execute two shirakutnamahs, one including Foujdar Singh and the other Jhoomuk Lall. If the money in question was really theirs, assuredly their names would have been inserted in the bhurnanamah, or a separate document would have been given them at the time, and not after a lapse of two years. Moreover, in the suit on the bhurnanamah, when he took out execution of his decree, Mynah Koonwur, on a settlement of documents between them, after deducting the above rupees 4,000, which were in the name of Foujdar Singh and Jhoomuk Lall, paid the entire remaining balance, as proved by the account of adjustment written by Kodye Lall, the heir of Foujdar Singh. Mynah Koonwur also returned to him the shirakutnamah, in which was the

name of Jhoomuk Lall, and as the teep given by him (the defendant) to Jhoomuk Lall, had been burnt, Mynah Koonwur gave him a farkhuttee or acquittance, to the effect that she had no further demand. In regard, too, to the shirakutnamah given to Foujdar Singh, filed by the latter as objector in the bhurnanamah case, Mynah Koonwur authorized the plaintiff to give in a petition, acknowledging payment, and accordingly a vukalutnamah was given to Koorban Allee, vakeel, and as the latter will doubtless have given in the petition, it is therefore not clear why Mynah Koonwur has made a second claim for the same money.

Kodye Lall filed a petition of withdrawal as a plaintiff.

The principal sudder ameen gave the plaintiff a decree, deciding that there was no proof whatever that the sum of money, inserted in the shirakutnamah in the name of Foujdar Singh, was ever repaid to him or his heirs or to the purchaser Sheosuhye. Neither is there any documentary proof to shew either that the said money *boná fide* belonged to Musst. Mynah Koonwur, or that it had been deducted in the execution of the decree in the bhurna case, while as the witnesses for each side depose according to the wish of those who cited them, their testimony is not sufficient. Were it really the case that Musst. Mynah Koonwur had paid the defendant, Futtehchund Sahoo, as the latter was of course aware that Sheosuhye, who came forward as objector in the bhurna case was the real purchaser, how was it possible for the plaintiff in that case to allow such a deduction, without taking some document from Sheosuhye or his giving in a petition? In regard, too, to the document shewing deduction in the execution of decree, which the defendant has filed, although there is certain mention of such deduction in it, it is a mere scrap of paper, not attested by the signature of any one. Moreover, had the money been actually paid, its payment should and would have been made known to the court by which the decree was being executed, which is not the case. Lastly, the mere attestation of a vakalutnamah is no proof of payment.

In addition to the grounds of the defence, it is urged, in appeal, that the witnesses whom he (the defendant) cited were vakeels and trustworthy, and that the principal sudder ameen did not peruse the precedent he had to give regarding a purchase like this being illegal.

JUDGMENT.

I do not find that the precedent quoted by the appellant is to the point, or that there is any reason whatever to disturb the judgment of the lower court. The decision of the principal sudder ameen is therefore affirmed as just and proper, and the appeal dismissed with costs.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 10TH FEBRUARY 1849.
No. 573.

Regular Appeal from a decision passed by Syed Ushruf Hossein, Second Principal Sudder Ameen of Mozufferpoor, Tirhoot, dated 2nd August 1847.

Ramdharry Singh, (Defendant,) Appellant,
versus
Chowdhree Thaful Ullah, (Plaintiff,) Respondent.

THIS was an appeal against a decision passed by the second principal sudder ameen, who decreed, on the respondent depositing into court the half share of the purchase money, he should be let in possession of half of the village Teirah, pergunnah Jakur, for which the respondent had instituted a suit against the appellant, as having been purchased jointly with him at the auction sale.

This day both parties filed petitions of adjustment of the matter in dispute, to this purport: the respondent withdrawing his claim to the half share of the village, the half share and earnest money paid to the collectorate, on the purchase of the village, having been refunded to him; that the money deposited in court, agreeably to the decree of the second principal sudder ameen, be refunded to the respondent; that a decree be passed in favor of the appellant for the possession of the village; that each be chargeable for their respective costs.

The necessary enquiry having been made in respect to the validity of the petitions, Ordered, that a decree be drawn out according to the request of the parties.

THE 10TH FEBRUARY 1849.
No. 570.

Regular Appeal from a decision passed by Syed Ushruf Hossein, Second Principal Sudder Ameen of Mozufferpoor, Tirhoot, dated 2nd August 1847.

Mr. Studd and Ramdyal Misser, lessees, (Defendants,) Appellants,
versus
Chowdhree Thaful Ullah, (Plaintiff,) Respondent.

THE appellants appealed against the same decision of the second principal sudder ameen, as mentioned in case No. 573: having this day presented a petition of withdrawal of their appeal,—after the necessary enquiry with respect to the validity thereof, the withdrawal was admitted, and the case directed to be struck off the file. The amount of stamp of the appeal plaint be refunded to the appellants.

THE 15TH FEBRUARY 1849.

No. 97.

Regular Appeal from a decision passed by Moulvee Eradut Ali, Moonsiff of Mozufferpoor, dated 24th of November 1846.

Syud Ekbal Ally and five others, the heirs of Mussamut Beekoo, (Plaintiffs,) Appellants,

versus

Meer Eisan Ally *alias* Meer Tajoob and Nundkishore Lall and Musst. Unpooch, proprietors, of the first part, Suddaseeb Panrai, and two others, cultivators, second part, (Defendants,) Respondents.

THIS suit was instituted by the appellants for the reversal of the summary suit decision passed by the assistant collector of Tirhoot, dated 28th August 1845, and the cancelment of razeenameh filed, on the 18th of September 1845, by Suddaseeb Panrai and others, in their appeal against the abovementioned decision, before the collector. The action is laid at Company's rupees 29-1, the rent on account of the year 1251 Fuslee, on the cultivation of the land in village Meeha Puckree, chukla Nye, pergunnah Bissarah.

The purport of the plaint is, that within 8 annas portion of the aforesaid village, the appellants are proprietors of 6 annas, Musst. Futteemah Buksh has a share of 1 anna 12 gundahs, and the other 8 gundahs appertain to the defendants (respondents) of the first part, who sued the respondents of the second part, for rent on the share of 3 annas 4 gundahs, as being their father's share within the 8 annas portion. Suddaseeb Panrai denied their right to rent on so large a share, and they themselves (appellants,) filed a third party petition to the same purport, and declared the suing party held 8 gundahs share only, &c. The assistant collector, notwithstanding, decreed the whole amount sued for, whereon Suddaseeb Panrai appealed to the collector, but, having colluded with the respondents of the first part, filed a razeenameh in the appeal case, whereby they (appellants) are injured, as it tends to affect their right to 6 annas share.

The respondents of the first part allege their father held a share of 3 annas 4 gundahs, to which they have succeeded, and the plaintiffs (appellants) have no claim to 6 annas portion.

The respondents of the second part allege they are cultivators of the land on pottah,—or grant, from the respondents of the first part, and have no concern with the appellants.

The moonsiff dismissed the suit, on the grounds that it was instituted as a screen for the trial of their proprietary right, but, at the same time, the dismissal of the case was not to affect their real rights.

Against this decision the appellants urged the same matter as in their plaint.

COURT.

The decision of the assistant collector was grounded on the kubooleeut and evidence of the putwaree, and the razeenameh filed in the appeal case before the collector affects the ryuts only, and not any real rights which the appellants hold in the village. The decision of the moonsiff being just and correct, the decision is affirmed, and the appeal dismissed, without calling on the respondents.

THE 16TH FEBRUARY 1849.

No. 360.

Regular Appeal from a decision passed by Moulvee Syed Muneeroodeen, Moonsiff of Mhowa, dated 8th May 1847.

Sheewan Rae and four others, (Defendants,) Appellants,

versus

Kashee Singh and Ughurjeet Singh, (Plaintiffs,) Respondents.

THE respondents instituted this suit against the appellants, to recover from them the sum of Company's rupees 144-5, being principal and interest of arrears of rent, from 1251 to 6 annas instalment of 1254 Fuslee, on the cultivation of 13 beegahs and 13 biswas of land, within a third share of the village Khauseputty, pergunnah Hajeepoor. The plaint purports that Kashee Singh, one of the respondents, is half sharer of the third portion of the village by private purchase, and the other half share thereof is in the possession of the other respondent Ughurjeet Singh, under deed of lease from the proprietors, Hursoomerun Singh and Chohalall; that the said third share is distinct from the other shares of the village; that the defendants (appellants) are cultivators in the said puttee, and, not paying their rent, are sued.

Sheewan Rae, in answer to plaint, alleges the plaintiffs (respondents) have no concern in the village, the share appertains to Ramsuhee Singh and others, to whom he has paid his rent.

The other defendants (appellants) allege they do not cultivate, and have no concern in the cultivation under dispute.

A third party petition was filed by Ramsuhee Singh, on his own behalf and as guardian to Bhyjoolall, minor son of Bhyjnauth Singh, deceased, and Musst. Gungajul Koomur, the widow of Ramsoomerun Singh, deceased. They allege the village was acquired by their ancestor, Booneead Singh, who had four sons: first, Bhyjnauth Singh, the father of the minor; second, Ramsoomerun Singh, the husband of the widow, Gungajul Koomur; third, Hursoomerun Singh; and fourth, Chohalall Singh; and all four held their respective shares; that Sheewan Rae, the cultivator, has paid his rent to them.

Hursoomerun Singh and Chohalall filed a third party petition, in corroboration of the statement of the plaint.

The moonsiff passed a decision in favor of the plaintiffs (respondents,) on the grounds that a copy of decision filed, dated the 20th of August 1846, and copies of evidence of Rajroop Singh and Munhorut Raee, one of the defendants (appellants,) given in a summary case in the collectorate, prove the right of the plaintiffs (respondents) to the rent. The jumma-wassil-baqee filed by the putwaree, his evidence, and the evidence of other witnesses, prove the claim.

Against this decision, the appellants urged the respondents hold no documents from them for the cultivation, and that the decision filed is against other ryuts, and not them.

COURT.

The documents filed and evidence of witnesses establish the claim of the respondents. Therefore, ordered, the appeal be dismissed, without calling upon the respondents. Costs of both courts chargeable to appellants, and the decision of the moonsiff is affirmed.

THE 16TH FEBRUARY 1849.

No. 378.

Regular Appeal from a decision passed by Moulvee Syed Mohamed Mohamed Khan, Sudder Ameen of Mozufferpoor, dated 19th May 1847.

Chowdhree Sheehoobuksh Singh, after his demise, his widow, Musst. Neermohee Koomur, (Defendant,) Appellant,

versus

Mr. Sherman, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover the sum of Company's rupees 471-7-6, being the principal and interest on bond, to which is added the difference of exchange between Sicca rupees into Company's rupees.

The bond is dated 11th November 1834, corresponding with 25th of Kartick 1242 Fuslee, on the loan of Sicca rupees 221, at the rate of one rupee per month per hundred, to be paid on demand. It has the signatures of Sheehoobuksh Singh and four others, all of whom were sued together, with the heirs of Bustee Singh, who had died previous to filing the suit.

The defendants all denied having entered into the bond, and alleged the suit was not cognizable under Construction No. 1036, twelve years having elapsed, with the exception of two days, since the date of cause of action.

The sudder ameen passed a decree in favor of the respondent against Chowdhree Sheehoobuksh Singh only, exempting the other defendants, on the grounds that the evidence of the subscribing witnesses proved that Sheehoobuksh Singh alone signed the bond, and wrote the names of the others with his pen, who were not

present at the signing of the bond, and that Sheehoobuksh Singh acknowledged to them having received the amount of the loan.

Against this decision the appellant urged that the sudder ameen did not take into consideration the objection alleged in the answer to plaint respecting Construction No. 1036, &c.

COURT.

Construction No. 1036, to which the appellant has drawn the attention of the court, is not a guide as a precedent for this case; for the dismissal of the case cited in the Construction, under the rule of limitation was caused, seemingly by premeditated procrastination of the plaintiff in urging his claim: first, four years; secondly; ten years; and lastly, eleven years and ten months, whereby a lapse of nearly twenty-six years had occurred from the cause of action to the date of institution of that suit. But in the present suit it is acknowledged by the appellant, that twelve years had not precisely elapsed, consequently, it does not fall under limitation rule. The bond and loan having been established, therefore, ordered, the appeal be dismissed, without calling for the respondent's answer. Costs of both courts chargeable to the appellant, and the decision of the sudder ameen affirmed.

THE 17TH FEBRUARY 1849.

No. 361.

Regular Appeal from a decision passed by Moulvee Syed Muneerooddeen Hossein, Moonsiff of Mhowa, dated 20*th of May* 1847.

Hunooman Rae, Doolarchund Mutoon, and Musst Dulahee Sawun, widow of Peeharree Lall, deceased, (Defendants,) Appellants,

versus

Seeree Thawaree, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent, against the appellants, to recover Company's rupees 288-15-6, arrears of rent due from them, from the year 1251 to 1253 Fuslee, on 11 annas share of village Guddhye Surae, pergunnah Hajeepoor, of which the appellants are under-lessees to the extent of 15 annas share.

The plaint purports, that Hunooman Rae obtained leases from Ramlall, Lootif Ali, and others, proprietors of the aforesaid village, from 1250 to 1255 Fuslee, one for 11 annas share, on advance of rupees 2,999, and the other for 4 annas share, on advance of rupees 1,000, shortly after under-leased the whole 15 annas to Bekaree Thawaree, Hunooman Rae the 2nd, and Peeharee Lall, from 1250 to 1255 Fuslee; subsequent thereto, Hunooman Rae sold to him, the respondent, the lease, together with the advance on the 11 annas

share, and advised the under-lessees to pay the rent on that share to the respondent. The under-lessees not paying the rent, and Peharee Lall having died, his heirs are included in the suit for the rent.

Lall Mutoon and three others pleaded they were not heirs to Peeharee Lall and have no concern in the case.

The widow of Peeharee Lall and two others allege there was no under-lease, but that the original lessee held possession.

Beekaree Thawaree acknowledged the claim.

Hunooman Rae, the original lessee, filed a third party petition, denying having granted any written document to the plaintiff, respondent, who has been the man of business from his father's time, intrusted with signed blank papers, on one of which he may have deceitfully fabricated the bond.

Bholakee Lall filed a third party petition, alleging Hunooman Rae granted an under-lease to him of 8 annas share, and afterwards granted an under-lease of the whole 15 annas share to Beekaree Thawaree and others, which causing a dispute between them, the original lessee resumed the whole.

The moonsiff passed a decision in favor of the plaintiff (respondent) against Hunooman Rae the 2nd, Beekaree Thawaree, Doolar Chund, the father of Peeharee Lall, and Musst. Dulahee, the widow of Peeharee Lall, and exempted the other defendants from liability, on the grounds that from sundry copies of papers, (detailed in the decision,) together with copy of a decision, dated 22nd of April 1844, the original bill of sale and chittee, written by Kooblall and Sham Lall, proprietors of the village, to pay the rent to them, prove the possession of the durkutkinadars (or under-lessees) and the plaintiffs' (respondents') right to sue, the jumma-wassil-bakee filed by the putwaree, his evidence, and the evidence of other witnesses prove the plaint.

The appellants urged, the copies of papers, on which the moonsiff has decreed against them, do not prove the respondent's right, or that he was in possession of the land. If Hunooman Rae sold the 11 annas share of lease to the respondent, he would have taken an engagement from him for the payment of the rent, or would have obtained his kubooleeut from Hunooman Rae, &c.

COURT.

The bill of sale of the lease of 11 annas share, has not been verified by the subscribing witnesses, the chittee of advice from the vendor to the under-lessees has not been filed, and consequently not verified, and the chittee from the proprietors to pay to them the rent of the 11 annas share has not been verified, consequently the investigation is incomplete. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation on the points above indicated. The amount of stamp of appeal plaint be returned to appellants.

THE 17TH FEBRUARY 1849.

No. 371.

Regular Appeal from a decision passed by Sheikh Durasut Ali, Moonsiff of Durbungah, dated 17th of May 1847.

Gopaul Doss and Bunse Lall, heirs of Govind Pershad, deceased, (Plaintiffs,) Appellants,

versus

Durbaree Lall and nine others, purchasers, Rashbeehary Lall, for himself and as guardian of Singheesur Dutt, minor son of Chutterdharee Lall, deceased, vendors, (Defendants,) Respondents.

THE appellant instituted this suit against the defendants, claiming the pre-emption of 16 gundahs, 2 cowrees, 2 krants' share of the whole 16 annas of village Mhalheeputtee, principal and dependencies, pergunnah Birdwar: amount of action laid at Company's rupees 9-9.

The claimant to the pre-emption alleged in his plaint, he was 11 annas sharer of the village, that the vendors sold 1 anna portion to Durbaree Lall and others, for the sum of rupees 285, under conditional bill of sale, who, after having applied to the court for a foreclosure, under Regulation XVII. of 1806, and on institution of suit for possession, obtained a decree on the 5th of February 1846, for the possession of 16 gundahs, 2 cowrees, and 2 krants. Hearing of the transaction on the 3rd of Phalgoon, he instantly made the tullub muwaseebut and eshad, and sent the amount of purchase money to the purchasers and vendors, who declined the tender; therefore sues for the pre-emption.

The purchasers, in answer, allege, the conditional sale expired on the 2nd of Aughun 1241 Fuslee, and on 27th of October 1838, obtained an order of the court to sue for possession; and the plaintiff obtained the 11 annas portion of the village by purchase, under bills of sale, dated 15th February and 9th of March 1844, being thereby subsequent purchases to their own; themselves have a claim to sue for pre-emption against the plaintiff, which they relinquish. The claim for pre-emption should have been made on passing the order of the court, under Regulation XVII. of 1806, and the suit was not instituted for a long time after that period.

The vendors allege the plaintiffs had no share in the village, when the conditional sale expired, therefore the suit is unjust.

Hunmanpershaud, guardian to Govind Sahee, minor, alleged the moonsiff's decree was in favor of the purchasers, against which he has appealed.

sur Dutt, son of Chutterdharee Lall, deceased, filed a third party petition, alleging that Rashbeehary Lall, his guardian, had no right to dispose of his share in the village, and hoped the pre-emption suit would not affect his rights.

The moonsiff dismissed the suit on these grounds: from a copy of decision, filed as precedent, passed by the Sudder Dewanny Adawlut, under date the 25th January 1847, from which it appears a claim to pre-emption should be made immediately on the sale becoming absolute, that is, final, on the order of the court to sue for possession, and which was not made for a long time after.

Against this decision the heirs of the plaintiff appealed, urging the reasons assigned by the moonsiff are not specified in any law book.

COURT.

The objections of the appellants are frivolous, and the decision of the moonsiff is passed in accordance with a precedent of the Sudder Dewanny Adawlut, consequently must be correct. Therefore, ordered, that the decision of the moonsiff be affirmed, and the appeal be dismissed without calling on the respondents.

THE 17TH FEBRUARY 1849.

No. 377.

Regular Appeal from a decision passed by Moulvee Syed Muneeroodden Hossein, Moonsiff of Mhowa, dated 14*th of May* 1847.

Musst. Beebee Wasillut, Beebee Mhujudun, and Beebee Hoomun, (Plaintiffs,) Appellants,

versus

Sheikh Mulla Buksh and three others, principals, Sheikh Ruhum Ali and seventeen others, (Defendants,) Respondents.

THIS suit is for possession, and transfer in their (plaintiffs') names, and partition of the revenue and land of 1 anna 12 gundahs within 8 annas, and of the whole village of Munsorepore Buleeah, and 1 anna within 5 annas of the whole 16 annas of village Chuppra Allaooddeen, chuckla Ghurjole, pergunnah Beesah. Action laid at Company's rupees 250-3-10.

The plaintiffs state in their plaint the 8 annas share of Munsorepore and 5 annas share of Chuppra Allaooddeen appertained to their grandfather on their mother's side, who had two sons, Sheikh Eshmael and Sheikh Goolaum Peer, and one daughter, Musst. Noor Beebee, the mother of the plaintiffs, who having died, the three heirs succeeded to the inheritance and held possession thereof. Sheikh Eshmael and Sheikh Goolaum Peer sold, under conditional bill of sale, 4 annas share to Sheikh Mulla Buksh, and the remaining share of the sons was sold at auction, in satisfaction of decree of court, and was purchased by Mulla Buksh, at which time the plaintiffs were dispossessed, a trifling cultivation only being left to Beebee Hoomun, one of the plaintiffs. Their mother, Noor Beebee, having died, they therefore sue.

In answer to plaint, Sheikh Eusuf Ali, son of Sheikh Goolaum Peer, deceased, alleged the mother of the plaintiffs was the daughter of Mahomed Saed, who never demanded and never was in possession. There was a suit for this property, in a case in which Musst. Jeeah and others were plaintiffs, *versus* Sheikh Eshmael and others, defendants, which was decided on the 14th of September 1814, and appeal decision thereof is dated 19th April 1826; in those cases the mother of the plaintiffs filed no claim as a third party, and she has been dead more than twelve years, therefore this suit is not cognizable. The plaintiffs' assertion that Mulla Buksh purchased, and has taken possession of the whole property, and left them a trifling cultivation, is false. Sheikh Mulla Buksh purchased the share only of Sheikh Eshmael, for he is in possession of his father's patrimony, and the plaintiffs are not in possession of any land.

Sheikh Mulla Buksh, in his answer, alleges that he purchased 4 annas share under conditional sale, and subsequently obtained a decree for possession, dated 20th of December 1832, and also an appeal thereof, dated 7th of April 1834, and purchased at auction 2½ gundahs portion belonging to Sheikh Eshmael, which was sold in satisfaction of decree of court; that he has purchased 2 annas portion from Sheikh Eusuf, whereby he is in possession of 6 annas 2½ gundahs justly obtained, &c.

The defendants, Ruhum Ali, in one answer, and Sheikh Futtah Ali and two others, in another, allege they have no concern in the suit.

The remaining defendants failed to file answer to plaint.

The moonsiff dismissed the suit, on the grounds that the possession of the plaintiffs' ancestor is not ascertainable, and they filed no proof of their own possession: the witnesses adduced reside in a different village, and are related to the plaintiffs, therefore their evidence is not to be depended upon. In the case in which Sheikh Khoda Buksh sued Mohamud Eshmael, the ancestor of the plaintiffs filed a third party petition therein, and was directed to sue for her claim, (the decision of that case is dated 20th December 1832 A. D.) She did not institute any suit. From that date to the institution of this suit, 13 years, 2 months, and 19 days have lapsed, therefore this suit is not cognizable.

This decision was appealed from, by the plaintiffs, urging that their mother continued in possession, and the cause of dispossession at the time of the auction sale was proved by the evidence of their witnesses, and that they are at this time in possession of 6 beegahs of land, and this suit is not barred by limitation rule, &c.

COURT.

By the Mahomedan law, females are, together with their brothers, entitled to share in the patrimony of their fathers. The mother of the appellants appears to have been entitled to what is claimed by the appellants, and, although not denied by the adverse party, they

endeavour to evade, under the pleas she never demanded nor was ever in possession. Although she did not institute a suit for her rights, as directed in the decision, dated 20th of December 1832 A. D., yet from the evidence of witnesses it appears she died within the last seven years, consequently her demise took place prior to half of the limited time had elapsed, and her daughters could not institute a suit during her life time, and their right to the claim of the property commenced only on the demise of their mother, which, having been sued for within eight years, their suit is not barred under the rules of limitation. Therefore, ordered, that the decision of the moonsiff be reversed, and the case be returned for re-investigation fully on the merits of the case, and to decide according thereto. The amount of stamp of appeal plaint be returned to appellants.

THE 20TH FEBRUARY 1849.

No. 233.

Regular Appeal from a decision passed by Kazee Mohamed Allum, Moonsiff of Coylee, dated 27th of February 1847.

Musst. Sheehoo Rance Ojhain, widow of Beeshnauth Jha, deceased, (Defendant,) Appellant,

versus

Beeneeram Thakoor, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent against the appellant and a minor nephew of her husband, for the recovery of Company's rupees 93-14-7, being the principal and interest of an advance made on a lease, granted by Beeshnauth Jha, deceased, and Nundlall Jha, of 6 beegahs 10 biswas of minhye land (or land exempt from revenue,) situate in village Delawurpoor, pergunnah Mholah, for the period of seven years, 1244 to 1250 Fuslee, the sum advanced was rupees 45, and the lessee was to pay a rent of 13 annas annually to the proprietors. The village being attached in 1246 Fuslee, under Regulation II. of 1819, he was hereby dispossessed of his lease; and the advance not being paid on demand thereof, is the cause of this suit.

Preeteeduth Misser filed an answer, alleged that he was guardian of Nundlall Jha, who is a minor, and was three years old only on the date the deed is stated to have been entered into, therefore he could not have entered into the engagement, hence the document is a

fabrication. To sue a minor is contrary to Regulation X. of 1793, and liable to be nonsuited.

Musst. Sheehoo Ranee Ojhain answered, the document is a fabrication, her husband never signed it, or took the money said to have been advanced.

The moonsiff passed a decision in favor of the plaintiff, exempting Nundlall Jha from liability, arising from his being a minor. From the evidence of the subscribing witnesses to the lease, having proved that Beeshnauth Jha signed the lease and took the money, Musst. Sheehoo Ranee Ojhain being heir to her husband, she is made liable to the debt.

The appellant urged that the moonsiff decreed against her on the evidence of witnesses. In the evidence of the witnesses there is a discrepancy. Rugbeer Lall, witness, deposed that her husband himself signed the document, and the other witness, Phakoo Tewarree, deposed it was written by another person. If the respondent was really in possession under the stated lease, he would have stated that circumstance to the authorities, making the investigation under Regulation II. of 1819, which was not brought forward at that time.

Respondent answered, there was no discrepancy in the evidence of the witnesses, regarding the signing of the lease by the husband of the appellant; for the second witness deposed he did not recollect whether the lease was signed by Beeshnauth Jha or by another. The objection made regarding the minor is useless, the moonsiff having exempted him from liability. Being a lessee of a small quantity of land, it was not mentioned to the attaching officers, which does not bar his claim to the advance; but in the ameen's measurement papers his name is mentioned as being in possession of that land.

COURT.

The second witness, Phakoo Tewarree, first deposed that Beeshnauth Jha could not write very well, and that his name to the document was signed by another: he subsequently stated, so long a time has elapsed he did not recollect whether it was signed by Beeshnauth Jha or another person. Both the witnesses deposed (although under different terms) to the purport Nundlall Jha was neither a young man, nor a child, at the time of entering into the engagement. The copy of the measurement paper, filed by respondent, yields no proof in his behalf, for it merely mentions he is the cultivator, whereas, if he had been lessee thereof, he would have caused that term to be inserted. The respondent's case has not been satisfactorily made out, but there is every reason to doubt the authenticity of the document, whereby the decision of the moonsiff cannot be upheld. Therefore, ordered, decree in favor of appellant, with costs of both courts chargeable to the respondent; the decision of the moonsiff be reversed.

THE 20TH FEBRUARY 1849.

No. 368.

Regular Appeal from a decision passed by Kazee Mohamed, Moonsiff of Coylee, dated 11th of May 1847.

Musst. Sheehoo Ranee Ojhain, widow of Beeshnauth Jha, deceased, (Defendant,) Appellant,

versus

Beeneeram Thakoor, (Plaintiff,) Respondent.

THIS is for the recovery of Company's rupees 53-5-4, being the principal and interest of a loan on bond, dated 11th of Phalgoon 1242 Fuslee, to be discharged at the end of Bysakh of that year. The loan was for Sicca rupees 25, taken by Beeshnauth Jha, and the bond signed by him. He having died, the suit is instituted against his widows and heir.

The defendant answered: the bond is a fabrication; if it had been a true one, the demand would have been made during her husband's existence, who died in the year 1247 Fuslee; and the suit is barred by rule of limitation, twelve years having elapsed.

The moonsiff passed a decree in favor of the plaintiff, on the grounds the evidence of the subscribing witnesses to the bond having substantiated that Beeshnauth Jha signed the bond and took the money.

Against this decision the appellant urged that Phakoo Tewaree, a witness in this suit, was a witness in the former suit, wherein he deposed her husband could not write well and did not sign that deed, and in this case that he did sign. His evidence is not to be depended upon. A copy of his evidence in the other case was filed, but the moonsiff took no notice thereof. The suit is instituted within two days of twelve years from the cause of action, therefore barred by rule of limitation.

The respondent answered: the evidence of Phakoo Tewaree in the other case was, that he did not recollect whether Beeshnauth had or had not signed the document, and this suit was instituted within twelve years.

COURT.

The evidence of Phakoo Tewaree in this case, taking into consideration that given in the other case No. 233, is not to be depended on, particularly as this bond is dated two years prior to the lease in case No. 233. It being doubted whether the signatures of Beeshnauth Jha were written by the same person, two persons among the crowd attending the courts, wholly unconnected with either party, were called into court to declare whether the two signatures were written by one and the same person. They both declared, from the formation of many of the letters, the two signatures could not have been written by the same person. This,

coupled with the circumstance that the evidence of one witness only, of the two witnesses who deposed to the signing of the bond, can be relied on, the decision of the moonsiff cannot be upheld. Therefore, ordered, decree for appellant, with costs of both courts chargeable to the respondent. The decision of the moonsiff be reversed.

THE 27TH FEBRUARY 1849.

No. 383.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen of Mozufferpoor, dated 4th of April 1846.

Leelumbur Rae Surbaudakaree, (Defendant,) Appellant,

versus

Gobind Sahee and others, (Plaintiffs,) Respondents.

THIS is precisely a similar case as that decided this day, No. 352 of 1846, and a similar decision is passed in this as in that case.

THE 27TH FEBRUARY 1849.

No 1623.

Regular Appeal from a decision passed by Sheik Nadir Ali, Moonsiff of Coylee, dated 19th September 1843.

Musst. Hyattun, (third party,) Appellant,

versus

Sheikh Bhudailah and four others, purchasers, (Plaintiffs,) Musst. Beebee Nugeenah, vendor, Sheikh Imam Buksh and others, sharers with vendor, (Defendants,) Respondents.

THE appellant came in as third party in the original suit, which was instituted by one portion of the respondents, viz. Sheikh Bhudailah and others, as purchasers of 15 beegahs within 125 beegahs of malikanah lands, against the other portion of the respondents, viz. Musst. Beebee Nugeenah as the vendor, and the others as sharers in the malikanah lands of the village Bochnore Moodahee, pergunnah Bubra, zillah Toorkee, for opposing them in taking possession of their purchase, which had been effected on payment of Company's rupees 300, by bill of sale dated 5th of January 1842, corresponding with 8th of Poos 1249 Fuslee, which document bore the seal of the kazee, and had been duly registered. Action of suit was laid at Company's rupees 300, the price of purchase.

The vendor, Beebee Nugeenah, allowed the case to go by default. The other respondents alleged that Sheikh Kootbun, who acquired the malikanah lands, allotted to Beebee Nugeenah 5 beegahs only, who consequently did not hold the right to the whole quantity of

15 beegahs disposed of by her, &c. In support of their allegation filed a copy of bill of sale, a decision passed by the sudder ameen, Fuzul Ali, and two decisions passed by the judge, Sir Alexander Seton, Bart.

The appellant, as a third party, filed a petition, alleging that the contending parties had colluded, for there was not any malikanah lands in the village in which she held possession of 9 annas 1 pie portion, in virtue of decisions passed by the Sudder Dewanny Adawlut, under dates 16th of January and 11th of February 1822, and the mutation of her name in the records of the collectorate, under proceedings held by the collector, dated 30th August 1838. Copies of these documents were filed in support of her allegations.

The moonsiff passed a decision in favor of the plaintiffs' (respondents') purchasers, setting aside the allegations of the (third party,) appellant, that although she filed two decisions of the Sudder Dewanny Adwalut, and proceedings of the collector for the mutation of her name in the records of the collectorate, which proved her proprietary right to 9 annas 1 pie share, though the possession of 125 beegahs of malikanah lands is not proved by the evidence of the witnesses adduced by Imam Buksh (defendant,)—from the bill of sale filed the defendants (respondents,) dated 1203 Hijree, it appears Raja Goolaum Mustopha Khan sold 125 beegahs of malikanah lands to Sheikh Kootbun, the father of Musst. Beebee Nugeenah; and Sheikh Imam Buksh and others, defendants, (respondents,) they also filed two decisions passed by the judge, one dated 11th July 1803, and the other dated 31st July 1806. In both mention is made that Imam Buksh, the son of Sheikh Kootbun, together with Sheikh Jeetun, the father of the (third party,) appellant, were plaintiffs, prove the malikanah lands appertained to Sheikh Kootbun. If Sheikh Kootbun had no concern in the malikanah lands, the name of Imam Buksh, as the son of Sheikh Kootbun, would not have been inserted in those decisions. The objection raised by Imam Buksh that Kootbun, in his will, bequeathed 5 beegahs to Beebee Nugeenah, 4 beegahs to Beebee Sumboo, and 116 beegahs to himself, is not correct, for, by the Mahomedan law, two-thirds devolve to the son and one-third to each of the daughters, and the will is not filed. The evidence of the subscribing witnesses to the bill of sale proves 15 beegahs were sold.

Against this decision, two appeals were preferred: one by Imam Buksh, one of the (defendants,) respondents, urging the vendor was not entitled to dispose of so large a portion of the malikanah lands as decreed to the purchasers: the other was by the third party, urging similar objections as those set forth in her third party petition, and that by this decision her rights were injured.

The judge, Mr. D. Pringle, dismissed the appeals, and affirmed the decision of the moonsiff. The appellant petitioned for a review of judgment: it was rejected by the judge, Mr. J. F. Cathcart, whereon the appellant preferred a petition to the Sudder Dewanny

Adawlut, for a special appeal, which was admitted by Sir Robert Barlow, Bart., on the grounds :—" The judge, in his order, records that it is not shewn whether there are, or are not, malikanah lands, and notwithstanding gives a decree for the plaintiffs, which, if executed, must necessarily interfere with this Court's final decision, and is opposed to it."

The Sudder Dewanny Adawlut after investigation state: " There is nothing, however, to shew whether the purchase of this 9 annas 1 pie share was distinct from the purchase of the 125 beegahs of malikanah lands, or not, and no local enquiry has been made to ascertain if any separate malikanah lands really existed."

That Court therefore remanded the case for re-trial. " The judge will call upon appellant to file the deed in virtue of which she and the other heirs of Jeetun hold a 9 annas 1 pie share of the village, as proprietors, and will, on reference to the ameen's report, mentioned in the decision of 1806, and by means of a local enquiry, if necessary, ascertain the existence, or otherwise, of separate malikanah lands, first requiring from the plaintiff a specific statement of the boundaries of the land, claimed by her in the present suit. After taking any further evidence that may appear to him requisite on the points in question, he will pass such decision as shall appear to him to be just and proper."

In accordance with the above instructions, the judge, Mr. J. F. Cathcart, issued the necessary orders to ascertain the points therein required, with exception of the ameen's papers mentioned in the decision of 1806. On the case being transferred to this court, the original case of that decision, together with the ameen's papers, were called for from the record office. The record-keeper reported that neither the original case nor the ameen's papers were to be found among the records of the year 1806; whereon the original documents were required, from which the transcripts were taken of the decisions of 1803 and 1806, and bill of sale of 125 beegahs of malikanah lands filed in the case. These are also reported not to be found, owing to the copyist; and also the record-keeper of that time being both dead and the petition of application for those copies, from which a guide to those original documents might be traced, is also not to be found.

The record-keeper produced a book, in which the orders of the court were inscribed, commencing with the year 1804, in which a portion of the decision, dated 31st of July 1806, was pointed out: it was the judgment portion only, it corresponds with that portion in the copy of the decision filed.

The appellant has not filed the required deed called for from her, but in lieu thereof filed reports of the collectorate, that, when the collector was directed, under decrees passed in the names of the respondents, Sheikh Bhudailah and others, purchasers, to enter their names in the records of the collectorate, as proprietors of 15 beegahs

of malikanah lands, furnished reports, which declared there is no malikanah land in the village Bochnore Moodahee, pergunnah Bubra.

The respondents filed no specific boundaries of the malikanah land claimed by them, but filed a sketch of the whole 125 beegahs of malikanah lands, whereon the judge, Mr. J. F. Cathcart, deputed an ameen to make a local enquiry of the existence of the malikanah lands, who filed his report, drawn from the evidence of witnesses, (all of whom were cultivators of the malikanah lands,) taken on the spot. It tends to shew there are malikanah lands to the extent of 125 beegahs, in two parcels, one of 100 beegahs, and the other of 25 beegahs, distinct from the mal lands of the village. Although this clashes with the reports of the collectorate, yet they are respectively reconcilable. For it would seem the malikanah land had never been registered in the records of the collectorate: on the other hand, the 125 beegahs of land having been originally disposed of and purchased under the designation of malikanah, have been continued to be so considered among the cultivators thereof.

Document No. 49, in the original case, is a copy of a decision, dated 16th December 1803, passed by Fuzul Ali, sudder ameen, from which it appears that Sheikh Jeetun, own brother, and Imam Buksh, son of Sheikh Kootbun, deceased, were plaintiffs, *versus* Raja Goolam Moostapha Khan, vendor, Gunneish Dutt and others, purchasers, were defendants.

The suit was instituted for the possession of 2½ annas portion of the village Bochnore Moodahee. The plaint is thus set forth:—In the year 1197 Fuslee, Raja Goolam Moostapha Khan, proprietor of the village Bochnore Moodahee, comprising 1,700 beegahs of land, of which he sold 1,250 beegahs to Sheikh Kootbun, the brother and father of the plaintiffs, and gave a bill of sale for 125 beegahs of malikanah thereof, agreeably to which they held possession of the malikanah lands to the year 1206 Fuslee: the computation of 1250 beegahs entitles them to 11 annas 3 pie, and a trifle more portion of the village. In 1207 Fuslee, they first attained the knowledge that the aforesaid Raja had, in the years 1204 and 1205 Fuslee, under several bills of sale, sold to the extent of 6 annas 3 pie portion of the village. They then remonstrated with the Raja and the purchasers, that 11 annas 3 pie having been sold to them, there remained 4 annas 1 pie only, how could the one sell and the others purchase 6 annas 3 pie portion? The demand for justice not being attended to, they proceeded to the collector, whose amlah mentioned that the Raja had given orders for several persons to be put in possession to the extent of 6 annas 3 pie portion, there remained 9 annas 1 pie, if we wished for that, to present a petition, and to sue for the remainder of the claim. Whereon a petition was presented for the 9 annas 1 pie portion; the revenue thereof is regularly paid to the Government. When their amlah proceeded to the village, it was ascertained the other purchasers had selected the

best lands, and left them the indifferent lands, therefore sued for 2½ annas portion, that the lands of 11 annas 3 pie portion be measured, boundary marks be formed, and possession given.

The Raja, in answer to the above plaint, denied having sold the mal lands, but acknowledged the sale of the malikanah lands to Kootbun, who proceeded to the collector and obtained an order for possession: on the tehsildar demanding revenue from him, he wrote an ikrarnamah, or engagement, that he was entitled to hold possession of the malikanah lands and to take the revenue from the Raja. He, the Raja, presented a petition to pay the revenue for the first ten years. Owing to deficiency of resources, he was compelled to dispose of 6 annas 3 pie portion to discharge the revenue to the Government, from which time those purchasers have been in possession. At the end of the year 1206 Fuslee, the plaintiffs, without giving him any intimation thereof, deceitfully presented a petition to the collector, stating they had purchased 9 annas 1 pie portion of the village, and were put in possession.

The other defendants pleaded they had purchased 6 annas 3 pie portion, obtained mutation of their names in the records of the collectorate, and were let in possession by an order of the collector. At the end of the year 1206 Fuslee, the plaintiffs presented a petition to the collector that, after deduction of 6 annas 3 pie share, they be let in possession of 9 annas 1 pie, their purchase, and accordingly obtained an order for possession thereof. If the plaintiffs had a claim to 11 annas 3 pie portion, how came they to solicit the collector for the mutation of their names to 9 annas 1 pie?

The attorney of the plaintiffs, on interrogations from the sudder ameen, answered, the muhal and malikanah lands were one, and included together in the petition to the collector for possession of 9 annas 1 pie, and that the plaintiffs were in possession of 1,000 beegahs. The sudder ameen observed, the proportion in annas and pie was not mentioned in the bill of sale, for the malikanah land of the plaintiffs, as was specified in the bills of sale of the defendants, and passed the following decision on the case. Owing to the plaintiffs being in possession of 9 annas 1 pie portion, they were entitled thereto, but dismissed the suit for 2½ annas portion.

Document No. 47 is a copy of an appeal decision, dated 11th July 1803,* passed by Sir Alexander Seton, Bart., judge. This shews the plaintiffs appealed from the decision passed by the sudder ameen, urging they required the quantity of land agreeably to the bill of sale for the malikanah land. The judge enquired, if the appellants claimed the quantity of land agreeably to the bill of sale for the malikanah land, why was the suit instituted for 2½ annas portion? to this no reply was made. The decision of the sudder ameen was affirmed, with permission for the appellants to sue for the quantity of land.

* This should be 1804, or the year of sudder ameen's decision, 1802.

Document No. 48 is a copy of a decision, dated 31st of July 1806, passed by Sir Alexander Seton, Bart.

Sheikh Mohamud Jeetun and Imam Buksh, Plaintiffs,

versus

Musst. Ranee Roshun Jan, widow of Raja Moostapha Khan, deceased, vendor.

Gunneish Dutt and others, purchasers, Defendants.

THE plaint in this is similar to that of the other case, grounded on the bill of sale of 125 beegahs of malikanah land, whereby 1,250 beegahs of mal land were considered to have been also sold. Plaintiffs being in possession of 9 annas 1 pie portion of the village, computed to comprise 1,700 beegahs, they were in possession of 700 beegahs only, therefore sued for the remainder of the land, 550 beegahs.

The answer of the purchasers is similar to that in the former case.

The answer of the Ranee stated, that she acknowledged the sale, of the 125 beegahs of malikanah land, and that the rest of her answer was of a very great length. Her attorney pleaded the sale of the malikanah land was invalid, it being prohibited under Section 83, Regulation VIII. of 1793, and the plaintiffs had delivered to the ameel (or collectors of rents) of the pergunnah, a bazeenamah (or deed of relinquishment) that they would not pay the revenue.

The judge observed, he had looked at the Regulation cited, and it is mentioned therein that, on the receipt of the Regulation, the orders contained therein are to take effect. The Regulation of 1793 corresponds with 1200 Fuslee; the bill of sale filed by the plaintiffs is dated 19th Zilkat 1203 Hijree, corresponding with 1197 Fuslee, being of a prior date to the promulgation of the Regulation, the objection urged by the defendants regarding the Regulation is therefore of no avail.

With regard to the ikrarnamah, the attorneys of the plaintiffs, and Sheikh Jeetun, one of the plaintiffs, being present, were asked if the ikrarnamah was correct: they denied it, and alleged, if such a document had been delivered to the ameel, how would the collector, at the time of the settlement within the whole village, have effected a settlement with them for 9 annas 1 pie portion, on representation of their purchase by petition? The original ikrarnamah was required from the defendants: they asserted it could not be adduced by them, it was with the ameel among their papers. The ameen, who had been deputed to take a measurement of the entire village, reported the land of the entire village, as ascertained by measurement, comprise 1,500 beegahs, 12 biswas, 5 dhoors, of which 300 beegahs 10 biswas were minhye, burmooter, &c., which being deducted, left remaining 1,199 beegahs, 1 biswa, 5 dhoors.

JUDGMENT. Whereas the plaintiffs sue for the possession of 550 beegahs of land, on the computation of 1,250 beegahs, in conformity to bill of sale of the purchase of 125 beegahs of malikanah land, from the whole of the lands comprised within the village Bochnore Moodahee, of which, it is stated in plaint, the plaintiffs are in possession of 700 beegahs. The defendants also, in their answer to plaint, acknowledged the sale and writing of the bill of sale for 125 beegahs of malikanah of the land comprised within the said village, and of the possession by the plaintiffs of 9 annas 1 pie share. And from the measurement effected by the ameen of the court, the whole lands of the said village are comprised in 1,199 beegahs, 1 biswa, 5 dhoors. Therefore, ordered, that the plaintiffs remain in possession of the entire village Bochnore Moodahee, on payment of the revenue to the Government, and if the defendants have any claim, they can sue the heir of Raja Moostapha Khan. The defendants to pay the costs of suit to the plaintiffs; the claim of this suit is decreed to the plaintiffs.

COURT.

From copy of the decision passed by the sudder ameen, and the decision passed by the judge on the appeal from it, it appears that Sheikh Kootbun purchased 125 beegahs of malikanah land in the village Bochnore Moodahee, under bill of sale, dated 19th Zilkat 1203 Hijree, from Raja Goolaum Moostapha Khan, the proprietor of the village; that the said malikanah land was held in possession by the purchaser and his heirs, for the period of ten years, from 1197 to 1206 Fuslee, distinct from the mal land of the village. Under virtue of that bill of sale, (for no other bill of sale was averred to have been granted,) the heirs of Kootbun, on application to the collector at the latter end of 1206 Fuslee, obtained a mutation of their names, as stated in their plaint, of 9 annas 1 pie portion of the mal land of the village, and sued in the court of the sudder ameen for 2½ annas portion more, as being entitled thereunto under virtue of the abovementioned malikanah bill of sale. During the investigation of the suit, the plaintiffs averred the malikanah and mal land were one, and both were included in their application to the collector, and in their suit. They were established in their possession of 9 annas 1 pie portion by the decision of the sudder ameen, but their suit for 2½ annas portion more was dismissed. On appeal against the dismissal, the judge affirmed the decision of the sudder ameen, but gave the appellants permission to sue for the quantity of mal land they considered themselves to be entitled to, under the malikanah bill of sale. They accordingly did so. In the investigation of this latter suit, the remarks of the judge regarding the objection urged against the validity of sale of the malikanah land, are incorrect; for the latter portion of Section 38, Regulation VIII. of 1793, is thus worded: "Grants for malikanah lands not made or confirmed by

the supreme authority of the country, are declared invalid by the Regulation passed on the 8th August 1788. If the collectors, however, should be of an opinion that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue." Now the commencement of the year 1203 Hijree corresponds with the 2nd of October 1788; the month Zilkat is the eleventh month of the Mahomedan year, which brings the date of the bill of sale, 19th Zilkat 1203 Hijree, to correspond with about 21st of September 1789, one year, one month, and ten days, subsequent to the order of prohibition of sale of malikanah lands. Be that as it may, the judge decreed to the plaintiffs the entire lands of the village, as ascertained by measurement of the ameen, with the exception of the minhye, burmooter, &c., and to the entire exclusion of the defendants, the purchasers of 6 annas 3 pie portion of the mal land of the village, who were directed to sue the heir of Raja Goolaum Moostapha Khan; but the attorneys of both parties in the present suit, acknowledge that those defendants still retain their respective shares in the village. The ameen's papers of 1806 not being forthcoming, it is not ascertainable whether the measurement of the malikanah lands was included in the mal land, or formed any portion of the 300 beegahs, denominated by the ameen as minhye, burmooter, &c. It is considered not to have been included in the separate measurement of the 300 beegahs, as the proprietors of the malikanah land, in the suit before the sudder ameen in 1803, declared the malikanah was included in the mal land in their possession, and sued for, and in the decisions of 1803 and 1806 was absorbed within the land awarded; consequently, from the dates of those decisions, not having been appealed from, no distinct malikanah land can legally exist. Therefore, ordered, decree in favour of appellant, the decision of the moonsiff be reversed, and costs of both courts chargeable to respondents.

THE 27TH FEBRUARY 1849.

No. 352.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen of Mozufferpoor, dated 4th April 1846.

Baboo Bhugwuttee Churn Mookerjee and two others, (Defendants,) Appellants,

versus

Govind Sahee and eight others, (Plaintiffs,) Respondents.

THE respondents instituted this suit against the appellants, for cancelment of bill of sale, and also for possession and mutation of their names in the records of the collectorate, of 2 annas within the whole 16 annas of talooqa Bishenpore Bulbudder, 2 annas within 8 annas

portion of villages Beekrumpore and tollah Sheikoopore, chuckla Gurjole, pergunnah Beesarah, with mesne profits from the time the amount of the purchase money was realized from the resources of the abovementioned property; amount of action laid at Company's rupees 4,695, 4 annas, 6 gundahs, 3½ cowries.

Purport of plaint:—the ancestor of the plaintiffs, Baboo Sheebnaraen Singh, deceased, sold 8 annas share of the abovenamed property, under three bills of sale, dated 9th November 1820, corresponding with 19th Kartick 1228 Fuslee, for the sum of Sicca rupees 21,000 4 annas, to Gundroop Sahee, the son-in-law of dewan Kishunpershaud for rupees 10,500, 2 annas, to Baboo Doorgachurn Mookerjee and Baboo Kissenmohun Mookerjee for rupees 5,250, and 2 annas to Baboo Leelumbur Rae Surbaudakaree for rupees 5,250. They all wrote under one ikrarnamah, or agreement, making the sales conditional, the repossession should be given conformable to the purchases, by causing mutation in the collectorate. Afterwards the sons of dewan Kissen filed an application in the court for a foreclosure of their share: on notice, the money was deposited in court and possession of that share was restored; although an application was preferred to the court, claiming mesne profits on that share, no order regarding it has been passed. The purchasers of the other 4 annas share are still in possession, from the resources of which they have realized more than the purchase money, with a surplus due to the plaintiffs. These purchasers not having applied to the court for a foreclosure, the plaintiffs presented a petition to the court regarding that subject: the judge directed them to institute a regular suit. The bills of sale being distinct, therefore distinct suits are instituted against the parties.

The defendants answered, the bill of sale is not conditional, but an absolute sale. The ikrarnamah, or agreement, alleged to have made the sale conditional, does not so, it is to this purport. If the vendor wishes to purchase the property on or before 30th of Bhadoon 1232 Fuslee, at the same amount it was sold for, they will sell it, if they do not, the vendor to deposit the money in the court and take possession of the property. From which period, more than 20 years have elapsed: agreeably to Regulation II. of 1805, this suit is not cognizable. The annual produce of the property set forth in the plaint, does not yield so much as for the payment of the annual interest on the purchase money. The purchase money of 4 annas share having been paid, that property has been taken back, but the plaintiffs wish to obtain the redemption of the share in their possession in a different mode.

The principal sudder ameen decreed in favor of the plaintiffs, for the cancelment of the bill of sale, also for possession of the 2 annas portion of the property, the mutation of the names of the plaintiffs in the records of the collectorate, and to receive the sum of Company's rupees 4,039-15-5, surplus proceeds of the produce of the property,

and mesne profits from the date of institution of the suit to the date of being let in possession, with interest thereon, on the following grounds. The writing of an ikrarnamah shews the sale was conditional. From three decisions filed by the plaintiffs, it appears the opinion of the Sudder Dewanny Adawlut in similar cases, granted interest to the exact amount of the principal sum; these decisions are precedents for this case; and proof of the annual produce of the property, from the evidence of the lessees of the property adduced by the plaintiffs, these lessees filed the deed of adjustment effected between themselves and the purchasers, from which is shewn the accounts at the foot of the plaint are correct. The whole property of 8 annas portion was leased on an annual rent of Sicca rupees 3,201, for five years, from 1228 to 1232 Fuslee. The 2 annas portion under dispute, yielded annually Sicca rupees 800, from which rupees 204-11-0-2½ is to be deducted as Government revenue on this portion paid into the collectorate; then remains to the purchasers Sicca rupees 595-4-19-1½, annually, to be accounted for from 1228 to 1251 Fuslee, twenty-four years, the period they have been in possession, making a total of Sicca rupees 14,287-7-5, from which is to be deducted the amount of purchase money, and an equal sum for interest, viz., Sicca rupees 10,500, leaves a surplus to be paid to the plaintiffs of Sicca rupees 3,787-7-3, equivalent to Company's rupees 4,039-15-5, &c.

In the appeal from this decision, the appellants urge: the terms of ikrarnamah do not make the sale, under the bill of sale, conditional, but an absolute sale; the deduction made by the principal sudder ameen of the amount of purchase, with an equal sum for interest, from the proceeds of the property, and making the remainder a surplus payable to the respondents, is not just; the purport of the Section 2, Regulation I. of 1798, and Section 5, Regulation XVII. of 1806, and Construction No. 15, clearly states the interest on the amount borrowed is first to be discharged; if the interest and the principal have been realized from the usufruct, then the property is to be restored. Three decisions to this purport, as precedents, were filed, from which it is proved the interest is first to be paid, and if there be any surplus, that is to be taken in discharge of the debt.

The respondents answered; the ikrarnamah, or agreement, was written with a design to make the sale conditional; the exact amount of interest, with that of the principal sum of purchase money being deducted from the usufruct, in the manner effected by the principal sudder ameen, is in comformity to the Regulations and the decisions filed by them as precedents.

Court.

The points to be ascertained are: whether the sale of the property was conditional, or absolute; whether the total sum of principal and equal amount of interest is at once to be deducted from

the aggregate amount of usufruct, for the period the purchasers have been in possession of the property, or whether the amount of legal interest on amount purchase is not first to be paid from the usufruct, prior to any portion of the usufruct being carried to the discharge of the purchase money.

From the applications of both parties to the collector, and the proceedings of that officer, for the mutation of the names of the purchasers, in lieu of the vendor, in the records of the collectorate, it is not ascertainable whether the parties contemplated a conditional or an absolute sale of the property. It is true, there is no mention in the ikrarnamah of payment of interest as specified in ikrarnamahs of conditional sales, but from the wording of this ikrarnamah it appears to have been granted by the purchasers at the request of the vendor, from which it is evident he then hoped to be able to redeem the property: fixing a stated period for the purchase of the property, for the same amount as was paid for it by them, and if they refused to sell, to deposit the amount in court for the possession of the property, undoubtedly made the sale conditional. The heirs of the vendor should have deposited in court the principal sum, that is, the amount purchase, on institution of this suit, in conformity to Section 7, Regulation XVII. of 1806, to have been of any avail to them. Although the two decisions of the Sudder Dewanny Adawlut, one dated 27th of February 1834, No. 207 of 1832, the other dated 10th of January 1833, No 343, taken by the principal sudder ameen as precedents in this case, are not precisely so. It is true the principal sum and a like sum were awarded for the redemption of the property in those cases, but owing to some deceitful transaction in the matter of their mortgages, and the deductions not being made from the usufruct, the borrowers had to pay those sums from other means, for the redemption of their property: the account formed by the sudder ameen does not seem to be equitable. By Section 2, Regulation I. of 1798, and Section 5, Regulation XVII. of 1806, legal interest is to be paid to the lender, and from the respondents' own shewing in plaint and the account formed by the principal sudder ameen, the usufruct did not yield sufficient to discharge the legal interest on the amount purchase, which, in equity, should have been first discharged; hence the property has not been fairly redeemed. Therefore, ordered, decree for appellants with costs of both courts chargeable to the respondents, and the decision of the principal sudder ameen be reversed.

THE 28TH FEBRUARY 1849.

No. 382.

Regular Appeal from a decision passed by Moulvee Syed Azim Ali Khan, Moonsiff of Dulsing Surai, dated 20th of May 1847.

Musst. Ajnasoo Koonwur, widow of Nynd Rae, deceased, (Plaintiff,) Appellant,

versus

Sheehoo Sahee Rae and eleven others, (Defendants,) Respondents.

THE appellant instituted this suit against the respondents for the possession and mutation of her name, in lieu of her demised husband, of 2 annas within 8 annas share of the 16 annas of village Sustolee, pergunnah Seerasah. Action laid at Company's rupees 24-8, being three times the annual amount of revenue of the disputed property.

The plaintiff states in her plaint, that the 8 annas portion of the village was acquired by four full brothers: 1st, Byjun Rae, the father of Beenoke Rae; 2nd, Sunker Rae, the husband of Nowlasee Koonwur; 3rd, Ajeeb Rae, the father of Beedater Rae; 4th, Preetee Rae, the father of Nynd Rae, the husband of the plaintiff. They all continued to hold possession. On the demise of Sunker Rae, his widow, Nowlassee Koonwur, sued and obtained a decree for 2 annas portion, and is still in possession. After the demise of Nynd Rae, the husband of the plaintiff, she came in possession of his portion, but the defendants opposing her in obtaining a mutation of her name in the collectorate, she is compelled to sue.

Nowlasee Koonwur and five others, defendants, acknowledge the claim of the plaintiff. Six defendants failed to file answer to plaint.

Gujraj Jha filed a third party petition, urging that, among the four brothers two died, viz., Sunker Rae and Preetee Rae without leaving issue, whose shares devolved to Byjun Rae and Ajeeb Rae, these persons holding 4 annas each, they sold 2 annas portion to him and others, the remaining 4 annas was sold by auction, and purchased by him and Ununt Lall.

The moonsiff dismissed the case on the following grounds: although the evidence of the plaintiff's witnesses corroborates her plaint, but from the decision filed by the third party, it appears the 8 annas share had been twice leased by the proprietors; in neither of those leases, the name of the plaintiff is discoverable; therefore her statement of being in possession, is erroneous; the copy of bewastah of the pundit, filed in this case, shews Hindoo females have no concern in ancestral property; this is ancestral property, and not acquired by her husband; notwithstanding the decision of Nowlasee Koonwur's case was called for, the attorney for the plaintiff has not filed it.

From this decision the plaintiff appealed, urging the principal defendants acknowledge her claim, and which was by the evidence of her witnesses proved; of course the third party would not adduce

any document which would prove her possession; the decision of the case of Nowlasee Koonwur was called for on 18th of May 1847, and the decision was passed on the 20th of May 1847; thereby sufficient time was not allowed to file it.

COURT.

From the records of the case it appears that on the 18th of May the moonsiff passed an order for the plaintiff (appellant) to file the decision passed in the case of Mussamut Nowlasee Koonwur, and on the 20th of the said month dismissed the appellant's case, which shews there was not sufficient time allowed to file the document called for, and a very material one, as a precedent in the appellant's case; consequently, the investigation was insufficient. Therefore, ordered, the decision of the moonsiff be reversed, and the case be returned for re-investigation. Amount of stamp of appeal plaint to be returned to appellant.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: ROBERT TORRENS, ESQ., JUDGE.

THE 6TH FEBRUARY 1849.

Appeal from a decision passed by Roy Huru Chunder Ghose, Principal Sudder Ameen, on the 2nd of December 1847.

Saroda Dossee, (former Plaintiff,) Appellant,

versus

Shere Khan, Doorgachurn Ghose, Nubkisten Bose, Nuffer Mistree, Suroop Chunder Udhikarree, Thundee Beebee, Munnee Beebee, Sheik Abdoolla, and others, (former Defendants,) Respondents.

To have possession and right declared to dwelling-house and land. Suit laid at rupees 675.

The plaintiff sued to have her rights declared to certain lands and a dwelling, which she also sought to obtain possession of. She instituted the suit alleging that 2 beegahs, 2 ks., 5 chs. of ground situated in Chuckerbair, Dhee Punchawongong, with a dwelling-house thereon, is her property, but the said dwelling-house was sold, in satisfaction of a decree passed in favor of Shere Khan, against plaintiff's husband, Doorgachurn Ghose, notwithstanding that plaintiff petitioned that the sale might not take place. She states that the land mentioned was bought in different parcels from Okil Mistree, Nubkisten Bose, Munnee Beebee, Abdoolla, and others, (stated thus in plaint,) and Chand Munnee, whom, with the last named, she has made defendants. She states that the sales by those persons who disposed of the property to her are described in seven different kubalas.

In answer, Shere Khan submits that truly the property sold belonged to Doorgachurn, and that the claims set up by plaintiff are merely to defraud the creditors of that person. Thundee Beebee and Munnee Beebee are widows and heiresses of Peer Mahomed Soobadar, who bought, plaintiff alleges, a part of the land; they did not answer. Oomur Mistree, the defendant, is son and heir of Okil Mistree, and answered that his father sold the ground described by the plaintiff to her, and made over a kubala accordingly to her. Suroop Chunder Udhikarree is made a defendant, because he also, holding a decree against plaintiff's husband, Doorgachurn Ghose, had applied to obtain his dues from the proceeds of sale of

the property, and he replies that it was Doorgachurn's property which was sold and not the plaintiff's.

In the lower court the plaintiff filed five of the several deeds of sale alleged to have been executed in her favor by the defendants named in her plaint; but the principal sudder ameen dismissed the claim of the plaintiff, because there was no sufficient evidence of the property having been sold to her. The witnesses to the various deeds of sale put in were said to have died except one, Sonatun Doss Byraggee, when the case was tried in the lower court. This man was an attesting witness to two of the deeds of sale. She filed three other deeds, but adduced no witnesses to prove that they were genuine documents.

The evidence was considered insufficient by the principal sudder ameen, who was of opinion that under the circumstances the case was founded on collusion between plaintiff and her husband.

In appeal, the plaintiff submits that the ground is hers. She urges that in the court of the moonsiff of Russa, Sartuk Mundul obtained a decree against her, appellant, on the security of 9½ cottahs of ground claimed by her in this case. She prays that a local enquiry may be set on foot as to her right, and files copies of the evidence of two witnesses, taken in the miscellaneous case instituted to set aside the attachment taken out by Shere Khan in execution of the decree passed in his favor.

In the lower court the mason, Ramdhun Mistree, who built the house which forms a portion of this claim, deposed that he had been employed as the builder by the plaintiff, but in another case (wherein the now defendant, Suroop Chunder Udhikarree, was the plaintiff *versus* Doorgachurn Ghose) the same witness gave evidence that he was employed to build the same house for *Doorgachurn* and *not for plaintiff*, and though two subordinate masons, Goluk Roy and Gungaram, did, in the principal sudder ameen's court, depose that the dwelling-house was built for the plaintiff (appellant,) it appears they could not say by whom the money was given to purchase building materials; and their evidence is, I consider, insufficient to prove the plaintiff's (appellant's) claim,' when the two conflicting statements of the head mason, their employer, is borne in mind. As to plaintiff's (appellant's) statements that the decree passed in favor of Sartuk Mundul will support her claim, I observe, from a copy of the petition for the money decreed, which plaintiff had filed, that her husband, and not the appellant, paid the money into court; her husband is Doorgachurn, and the payment does not appear to have been made on behalf of the plaintiff (appellant.) The witness, Sonatun Doss Byraggee, deposed in the principal sudder ameen's court that two deeds of sale, both dated the 8th of Chyte for 3 cottahs and 7 cottahs, respectively, were given to plaintiff (appellant,) the first by Sheik Oomur and three others, the other by Okil Mistree. This evidence the appellant would support by copies of the

depositions of Nyemooddeen and Okil Mahomed, in the miscellaneous case instituted by the plaintiff (appellant) to have the attachment effected at the instance of Shere Khan set aside; but the last two mentioned witnesses did not see the deeds they depose to having been executed; when they gave their evidence, these deeds do not appear to have been shown to them. I do not consider that the appellant has proved her right either to the house, which has been sold in satisfaction of the decrees passed against her husband, or to the land which she claims as hers, but with which no one has interfered, as the proceeds realised from the sale of the dwelling-house were sufficient to cover the sums decreed by the civil court against Doorgachurn Ghose. Though there are answers put in, in this case, admissive of plaintiff's (appellant's) claim to portions of her claim, yet as no proof of the appellant's right to such portions has been adduced by her, I am of opinion that the Circular Order of November 25th 1847 precludes my awarding her any thing on account of those admissions. I dismiss this appeal.

THE 14TH FEBRUARY 1849.

Isser Chunder Doss Kansarree, (former Plaintiff,) Appellant,

versus

Praunkisten Mookhopadhya and others, (former Defendants,) Respondents.

FOR possession of materials of a dwelling-house, with wassilat, valued at 1,360 rupees.

This case is fully described in pp. 241 to 246 of the Decisions of this court for 1847. In consequence of Praunkisten Mookhopadhya having been held liable for a portion of the costs in the calculation at the foot of the decree, he appealed to the Sudder Court, who remanded the case, because it was not specified in the body of the decision why the said Praunkisten was held liable for costs; and the court required that this point should be explained and thus much of the decision re-considered. On refering to the fysala and the nuthee of the case it is plain that the allegations in the plaint, which referred to Praunkisten Mookhopadhya, are not borne out, and I see no reason to make him liable for the costs, which were calculated against him, and which, as plaintiff could prove nothing against Praunkisten Mookhopadhya, must be paid by the plaintiff, (appellant.)

PRESENT: R. H. MYTTON, ESQ., OFFICIATING JUDGE.

THE 24TH FEBRUARY 1849.

No. 3 of 1848.

Appeal from a decision of Roy Huru Chunder Ghose, Principal Sudder Ameen.

Zameer Hajra, (Plaintiff,) Appellant,

versus

Dassy Bewa, Ruttun Bewa, Bezary Bewa, and Rajnarain Nath, (Defendants,) Respondents.

THE plaintiff originally sued in the moonsiff's court at Pautterghotta for the amount of a bond, in security of which a ryut's saleable interest in 90 beegahs and some fractions was pledged by the female defendants in this suit. While that suit was pending, Rajnarain Nath, the other defendant in this suit, put in his claim to a portion of the land pledged, viz. 68 beegahs, 11 c., 1 p., under a deed of sale purporting to have been executed by the said female defendants as also Petumber and Sooroop Ghose and Esur and Guggun Colla.

The suit being merely for recovery of money, his claim was not entered into, and he was told that, if the land should be attached in execution, he might then bring forward his claim; this he did, and it was rejected by the moonsiff.

On appeal, the judge ordered the sale of only that portion of the land to which no claim had been advanced, and gave permisssion to the decreeholder, in event of this being insufficient to satisfy his decree, to institute a fresh suit against the defendants and Rajnarain conjointly.

Accordingly this suit was brought.

Rajnarain was the only defendant who appeared. He rests his case on the unconditional sale to himself executed in 1243 (some months before the suit in the moonsiff's court) by the female defendants and others mentioned above, and denies the right of the females alone to dispose of the property. It belonged, he says, originally to Neeloo Ghose. He had one son, Bhyrob, whose widows are Ruttun and Dassy. Bezary is the sister of Neeloo's wife. Besides Bhyrob, there were daughters of Neeloo whose representatives are Petumber and others. Bhyrob, according to defendant, died before his father, and therefore his widows had no right to pledge the property, as it is asserted they did, to the prejudice of the rightful heirs descended from the daughters of Neeloo.

The principal sudder ameen, considering the sale to, and possession of Rajnarain, the defendant, well established by evidence and the admission of Dassy, one of the female defendants in the case before the moonsiff, dismissed the plaintiff's suit.

In appeal, the plaintiff insists upon his prior right under the bond to himself, and that Bhyrob died after and not before Neeloo, his widows thereby deriving a title by inheritance.

JUDGMENT.

There seems no reason to doubt the pledging of the property by the females. Whether they had the right to do so, it is admitted, depends upon the death of Bhyrob, *i. e.* whether before or after his father, Neeloo.

It is therefore essential to refer to the evidence to see which account is best established.

The plaintiff brought forward two witnesses, no relations or connections of the family of the deceased, who state that Bhyrob survived his father ten days, both of them having died twenty-four or twenty-five years ago. One of these witnesses could only have been fifteen or sixteen years old when those events occurred. On the other hand the defendant, Rajnarain, produced several old inhabitants of the village, and of the same caste as the deceased, who declare that Neeloo, the father, did not die until a year after his son Bhyrob. This evidence is more to be relied on than that advanced by plaintiff.

I am therefore of opinion that the female defendants had not a right to dispose of the property, and it cannot be sold for their debt, and the decree in the moonsiff's court being merely for money lent, does not affect the interests of Rajnarain, the defendant, in this case.

I therefore affirm the decision of the principal sudder ameen, dismissing the suit of Zameer Hajra.

ZILLAH BACKERGUNGE.

PRESENT: W. J. H. MONEY, ESQ., JUDGE.

THE 3RD MARCH 1849.

Case No. 4 of 1846.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 8th August 1846.

Mahomed Bassur Chowdhree, (Defendant,) Appellant,

versus

Kishen Kishore Neogee and Rajunder Chunder Neogee, (Plaintiffs,) Respondents.

THE plaintiffs sued to cancel a summary order of the collector, passed under Regulation VII. 1799, to uphold that of the deputy collector, and recover arrears of rent amounting to rupees 437, 5 annas, 5 pie, 10 krants. They represented that the defendant had a howla within their putnee talook, settled at a jumma of rupees 474, 12 annas, 16 krants, in consequence of arrear of rent for 1251, amounting to rupees 424-5, principal, and rupees 13, and 5 pie, 10 krants, interest; they were obliged to sue him under Regulation VII. 1799, and although objections were urged by the defendant to the effect that all the rents had been collected by them (plaintiffs) from the ryuts, and dakhilas and evidence were produced in support of their statement, the deputy collector disallowed them, and decreed in their favor. This order, however, was reversed by the collector in appeal.

The defendant, Mahomed Bassur, insisted that the rents had all been collected from the ryuts by the gomashtas of the plaintiffs, and referred to the dakhilas and evidence he had submitted in the summary suit. He quoted also Construction No. 456 and a precedent of the Sudder Dewanny Adawlut as barring the claim of the plaintiffs.

The principal sudder ameen, discrediting the dakhilas, and considering from the evidence of the witnesses, Ramguttee Huldar, Futtick and Mahomed Wass, that the defendant had himself collected the rents from the ryuts, decreed in favor of the plaintiffs.

The appellant, dissatisfied with the order, repeats the same objection urged in his defence. It appears that the dakhilas are dated in the month of Aughun, Poos, and Maugh 1251, and in a petition presented to the collector by Saduk, Saleem, Kabeer Paek, and Rammanick, ryuts, dated the 2nd Jyte 1252, they complained of the gomashtas of the respondents (plaintiffs) having collected rents from them and other ryuts at the latter end of the year, and given them no dakhilas. Upon

the face of such a petition, the appearance of dakhilas in this case is extremely suspicious, and no reliance can be placed upon them.

The decision therefore of the principal sudder ameen is hereby confirmed, and the appeal dismissed with costs.

THE 6TH MARCH 1849.

Case No. 44 of 1846.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 17th August 1846.

Surbbojya and Dayamoye, (Defendants,) Appellants,

versus

Baboo Gopaul Lall Tagore, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover arrears of rent, at the rate of Company's rupees 400 *per annum*, amounting to rupees 4,135, principal and interest, due from an ousut talook belonging to the husband of the defendants, situated in Joor Duryal, 'talooka Shureeffoonissa Begum, which he had purchased at a Government sale.

The defendants acknowledged the jumma assessed upon the ousut talook, but resisted the claim of the plaintiff for rent upon two grounds; first, the ousut talook had been attached and the rents collected from the ryuts from the year 1243 to 1247, amounting to rupees 2,977, 6 annas, which was sufficient, under Construction No. 456 and precedent of the Sudder Dewanny Adawlut, to bar the claim of the plaintiff; secondly, the talook in the first instance being purchased by Muheshchunder, an eight annas share was subsequently transferred to the plaintiff, and his brother, Kanoya Lall Tagore, and the other eight annas share to Nujeeboonissa, wife of Nooroodddeen Mahomed, from whom it came into the possession of the plaintiff in 1251, so that the claim for the rent he had set up was quite unfounded.

The plaintiff, in his replication, denied the attachment of the ousut talook, and declared that he was originally the *bonâ fide* purchaser in the name of his mooktyar, Moheshchunder.

The principal sudder ameen discredited the dakhilas produced by the appellants to prove the collections from the ryuts, and, referring to a copy of a proceeding of the judge of this district, dated the 16th November 1838, and copy of a petition of Neelmonee Bose, husband of Surbbojya, appellant, dated the 5th Sawun 1245, from which the possession of Neelmonee Bose from the date of his purchase was clearly established, decreed in plaintiff's favor to the extent of rupees 4,337, 6 annas, principal and interest.

The appellants recapitulated the objections urged in their defence. But, on a perusal of the record, I do not find that any satisfactory proof has been adduced regarding the alleged purchase of talook Shureeffoonissa by Moheshchunder, and the subsequent transfer

to the respondent (plaintiff,) nor as regards the attachment of the ousut talook belonging to the appellants; and as the validity of the dakhilas is completely counteracted by the documents referred to by the principal sudder ameen, I see no reason to disturb his decision, which is hereby confirmed, and the appeal dismissed with costs.

THE 14TH MARCH 1849.

Case No. 40 of 1846.

Appeal from the decision of Moulvee Mahomed Kulleem, Principal Sudder Ameen, dated the 27th July 1846.

Ram Soonder Doss, (Defendant,) Appellant,

versus

Rajah Sutto Churn Ghosaul, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover arrears of rent from the year 1246 to 1251, amounting to rupees 576, 9 annas, 11 pie, principal and interest, at the rate of rupees 65, 7 annas, 11 pie, *per annum*, due from Ram Soonder Doss and Ram Soonder Koond, on account of a howla called Rajessur Chukurbuttee, situated in kismut Tona, within his own talook. The defendants, notwithstanding the issue of the usual notice and proclamation, gave no reply in the case; and the principal sudder ameen, after being satisfied of the fact of their having been served, and with reference to the jumma-wasil-bakee papers adduced by the plaintiff, and the evidence of witnesses who deposed to the responsibility of the defendants, decreed *exparte* in the plaintiff's favor, to the extent of rupees 570, 7 annas, 6 pie.

Ram Soonder Doss, one of the former defendants, is dissatisfied with this order, and in his appeal urges objections to the jumma of the howla, as stated by the respondent, and denies the issue of the notices alluded to. But, after perusal of the record, I see no reason to disturb the decision of the principal sudder ameen, which is hereby confirmed, and the appeal dismissed with costs.



ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 7TH MARCH 1849.

Case No. 29 of 1848.

Regular Appeal from a decision of the Moonsiff of Dhekkabaree, Neel Madhub Mookerjea, dated the 31st December 1847.

Bukronath Mundul, Kishto Gope, and Neetae Raee, (Defendants,) Appellants,

versus

Shebuk Ram Mundul and Seetanath Mundul, (Plaintiffs,) Respondents.

THIS suit came before me in appeal, on the 11th June 1847, when it was remanded to the moonsiff, because his proceedings were contrary to law. See printed Decisions of this court for 1847, page 138.

The claim was for possession, and mesne profits for 1252 and 1253 B. S., of a seven annas share of a tank named Burra, and an eight annas share of a tank named Baree-julhuree, situated in mouzah Netoor, in virtue of a deed of sale executed by the proprietress, Poornima Dasya (defendant,) in favor of the respondents, under date the 15th Chyte 1251 B. S.

The appellants, of whom Bukronath Mundul is a shareholder in the tanks, in answer, acknowledged that they had prevented respondents from taking possession, alleging that Poornima Dasya had sold her shares, the amount of which they did not dispute, to one Omachurn Misr, and that respondents had no right to the property.

Omachurn Misr put in a claim as third party, stating that Poornima Dasya had sold the disputed shares to him under a deed of sale, dated the 27th Agrahun 1251; but he failed to adduce proof in support of his allegation, and the deed of sale filed by respondents, which was acknowledged by the vendor, having been duly authenticated by the subscribing witnesses, the moonsiff gave them (respondents) a decree, awarding against appellants, as being the disseizors, mesne profits for 1252 and 1253, to the amount of rupees 33, and costs of suit.

The appellants object to this decision on general grounds, and particularly to the amount awarded as mesne profits, which they contended was not proved; but I find that the amount so awarded is duly proved by the evidence of the witnesses, Haradhun Mundul,

Ram Kishor Gope, Urjun Dome, chokeedar, Tunoo Gope, and Dwarkanath Gope; and there being no doubt as to the correctness of the moonsiff's judgment, I confirm it, and dismiss the appeal, with costs chargeable to appellants.

THE 7TH MARCH 1849.

Case No. 33 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpore, Moulvee Atta Allee, dated the 10th January 1848.

Kartik Ghose, (Defendant,) Appellant,

versus

Bishunath Dutt, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, as the farmer of mouzah Kandpore, on the 5th April 1847, to recover from appellant the sum of Company's rupees 91, on a *kistbundee*, or instalment bond, alleged to have been executed by the latter, on the 28th Phalgoon 1249 B. S., in acknowledgment of arrears of rent, amounting to rupees 63.

The appellant, in answer, pleaded, among other matters, that the respondent forced him to execute the kistbundee under duress.

The moonsiff, considering the execution of the deed duly proved, decreed for the plaintiff.

In this court the parties submitted the decision of the matters in dispute to three arbitrators, under Regulation XVI. 1793, who affirmed the moonsiff's decree; and the appellant having failed to impugn the award, with reference to section 9 of that enactment the appeal must be dismissed with costs.

THE 7TH MARCH 1849.

Case No. 143 of 1848.

Regular Appeal from a decision of the Moonsiff of Doobrajpore, Moulvee Atta Allee, dated the 30th May 1848.

Taramunee Bewa, (Plaintiff,) Appellant,

versus

Bruhmoo Muyee Dasya and Gungaram Chowdhree, (Defendants,) Respondents.

THIS suit was instituted by appellant, on the 28th September 1847, to recover the sum of Company's rupees 23-8, on a bond alleged to have been executed in her favor by Gyaram Chowdhree, deceased, the husband of Bruhmoo Muyee Dasya and the brother of Gunga Nurayun Chowdhree, respondents, under date the 6th Assin 1251 B. S.

Gunga Nurayun Chowdhree, in answer, denied the bond, and pleaded that the claim had been made from motives of ill-will, and that he was not heir to his brother's estate, his brother's widow being alive.

The moonsiff dismissed the claim, on the grounds of discrepancies in the evidence; and on the same grounds the decision is affirmed by a *punchayet*, to which I referred the suit under Section 2, Regulation VI. 1832; and there being no doubt as to the correctness of the judgment appealed against, I confirm the same, and dismiss the appeal with costs.

THE 13TH MARCH 1849.

Case No. 39 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, dated the 8th February 1848.

Gyachurn Mundul, (Defendant,) Appellant,

versus

Patkoora Bewa, for self and minor daughter, Teen-Kowree, (Plaintiff,) Respondent.

THIS suit was instituted *in formâ pauperis* by respondent, on the 6th April 1847, to recover from appellant possession of a half share of certain personal property valued at Company's rupees 496-5.

The respondent stated in her petition of plaint that Gyachurn Mundul (appellant,) the son of Bhagbut Mundul, deceased, having been left an orphan, her father-in-law, Soodha Kisto Mundul, who had married a daughter of Bhagbut Mundul's, took up his abode in his father-in-law's house, to which he conveyed the whole of his effects, and he extended his protection to his orphan brother-in-law, and acquired property by the labor of his hands; that he afterwards married her (respondent) to his son, Jadhoo Mundul, and they all lived with Gyachurn Mundul in family partnership; that her husband and father-in-law having died one after the other, Gyachurn, in the month of Agrahun 1252 B. S., turned her out of doors, and she consequently instituted this suit to recover possession of a half share of the jointly acquired property, consisting of four stacks of paddy, cattle, household utensils, *et cætera*, as detailed.

The appellant, Gyachurn Mundul, in answer, admitted that respondent's husband and father-in-law lived with him, but he denied that respondent had any claim on him on that score, stating that he himself, when five and twenty years of age, admitted his sister and her husband, who were without the means of subsistence, into his

house and supported them out of charity; that they were both of them quite helpless, being afflicted with leprosy, and were unable to acquire property; that their son was also leprous from his infancy, and, having died before his father, respondent had no title to succeed as heir; that the greater part of the property detailed in the plaint was not in existence—what little property he had was his own, and respondent had no claim whatever to it; and that the suit had been got up in a spirit of revenge by one Ram Kishto Laha, whom he had sued for debt.

The principal sudder ameen gave judgment in favor of respondent, by awarding to her a half share of four stacks of paddy and other property to the value (for the half) of rupees 395-14-8½, on the grounds that her statement was proved by the evidence of three witnesses, viz. Bhagbut Panja, Ram Kishto Laha, and Jyhurree Mundul, and that appellant had failed to take any measures to secure the attendance of his witnesses, who had been duly summoned by the court.

The appellant explained, in the reasons for appeal, that he did not produce his witnesses, because he expected the suit would have been struck off on default, which respondent had incurred under Act XVI. 1845, independently of which he grounded his appeal on the unsatisfactory nature of the evidence adduced in support of the claim, objecting particularly to the evidence of Ram Kishto Laha, the person named in the answer as the instigator of the suit.

Deeming the evidence of respondent's witnesses unsatisfactory, I deputed an officer of this court to make a local enquiry, the result of which showed that the deceased, Soodha Kishto Mundul, had originally no property of his own, and that the only possible ground of claim that respondent could have on appellant, arose from the fact that her father-in-law lived with him in commensality and assisted in cultivating his lands. I therefore sent a question to the Hindoo law officer of the division on the subject of the claim; and his answer is, that, as respondent's husband died before his father, she could under no circumstances succeed to a share of the property to the exclusion of other heirs, and that she could only claim maintenance and the expenses of the marriage of her minor daughter. It is admitted on both sides that the deceased, Soodha Kishto Mundul, left a nephew (brother's son,) named Ram Jeebun Mundul, who is still alive. I consequently reverse the principal sudder ameen's decision, and dismiss the claim. Each party, under the circumstances of the case, to pay his own costs.

THE 13TH MARCH 1849.

Case No. 147 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Kytha, Wujeeooddeen Mahomed, dated the 27th May 1848.

Gholam Shabaz *alias* Shabaz Meean, (Defendant,) Appellant,

versus

Talib Hossein, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, as the proprietor of the zemindaree kismut Jaunkeepore in Kusba Barah, on the 3rd February 1848, to recover from appellant the sum of Company's rupees 17-13-9, arrears of rent from 1247 to 1253 B. S., on 16 cottahs of land.

The respondent stated that he acquired kismut Jaunkeepore at public sale, in the year 1244 B. S.: that in the month of Jeit 1246, (in the absence of his manager,) Gunesh Kotal, the son of his *semanadar*, or boundary keeper, let out to appellant, under a verbal agreement, 16 cottahs of land, situated near Doorga Kooree, (which land formed part and parcel of a jumma formerly held by Punahooddeen and Rufeek Mullick,) at an annual rent of rupee 1, 12 annas; and that appellant had only paid the rent of the first year, but refused to discharge the demand for the years for which the suit is instituted.

The appellant, in answer, denied that the land belonged to respondent's zemindaree, or that he entered into any engagements for the same, pleading that it was part of 2 beegahs 10 cottahs of land held by him as *lakhiraj*.

The moonsiff decreed the suit in favor of respondent, on the grounds that it was proved by the evidence of three witnesses, and the *jumma-wasil-bakee* accounts of 1246, which were attested by the writer, Gour Hossein, that appellant paid rent to respondent in that year; and that the record of a suit, No. 26 of 1840, decreed in favor of respondent against Punahooddeen and Rufeek Sheikh, the former ryuts, showed that 16 cottahs of land situated near Doorga Kooree was included in the kubooleeut on the ground of which that suit was instituted.

Doorga Kooree being the name of a plain, the fact that the disputed land is situated near it, is not sufficient to identify it as being included in the kubooleeut referred to, even if that document were admissible as evidence in this case. But the respondent's claim must rest on the fact of appellant's having entered into engagements for the land and paid rent in 1246, in support of which the evidence adduced is very unsatisfactory in my opinion.

The alleged verbal engagement rests on the unsupported testimony of Gunesh Kotal, respondent's servant. Two other witnesses are produced to prove payment of rent in 1246, but they both of

them live 7 or 8 coss distant, and their evidence does not show how they happened to be present when the payment was made. The *jumma-wasil-bakee* accounts I strongly suspect to have been prepared for the occasion. Gour Hossein, the person who attested them is respondent's nephew, and he says that he wrote them out himself from the *seha,* or daily accounts, which were afterwards accidentally destroyed by fire, and that the *jumma-wasil-bakee* accounts of the three succeeding years had also been burnt at the same time; but how the accounts produced got separated from the rest and were thus preserved is not explained. Under these circumstances, I can place no confidence in the evidence, and I accordingly reverse the moonsiff's decision, and decree the appeal to appellant, with costs in both courts.

THE 14TH MARCH 1849.

Case No. 150 of 1848.

Regular Appeal from a decision of the Moonsiff of Ookhra, Gobind Chund Chowdhree, dated the 25th May 1848.

Jeebun Kishto Bukshee, (Defendant,) Appellant,

versus

Tarachurn Chukurbuttee and Radhanath Chukurbuttee, (Plaintiffs,) Respondents.

THIS suit was instituted by respondents on the 25th May 1848, to procure the sale of certain lands and other property in execution of a decree of court: value of suit Company's rupees 14-15-4.

It appears that the property in question was attached by respondents in execution of a money decree, amounting originally to rupees 12-6-5, awarded by the moonsiff in their favor against Huro Soondree Dibya, as the heir of Markund Chukurbuttee, deceased. Two counter claims were preferred to the property, one on the part of Muhanund Mookhopadhya, and the other on the part of Jeebun Kishto Bukshee, and both of them were struck off on default. Muhanund Mookhopadhya then instituted a regular suit, pending the decision of which the moonsiff ordered execution of the decree to be stayed; and having been nonsuited, under date the 27th May 1847, respondents renewed their application for the sale of the property; but the moonsiff referred them to a regular suit, recording that he could not interfere summarily, and hence the cause of this action.

The defendant Peetamburee Dibya, the wife of Muhanund Mookhopadhya, who had died in the interim, filed an answer, alleging that the deceased, Markund Chukurbuttee, had sold the property to her husband in satisfaction of a decree; but she produced no proof in support of the plea.

The appellant Jeebun Kishto Bukshee, in answer, pleaded that the deceased had pledged the property to him, under a *steet kubala*, or deed of mortgage, dated the 13th Maugh 1250 B. S.; but the evidence of the two witnesses adduced by him in support of the deed being unsatisfactory, and the particulars of the document being at variance with the description given of it in the summary suit, the moonsiff suspected it to be a forgery; and he accordingly rejected it, and passed a decree in favor of respondents, charging the costs of suit against appellant, because it was proved in evidence that, after the decision of the suit instituted by Muhanund Mookhopadhya, he had lopped a branch of a tree growing on the property.

I concur with the moonsiff in rejecting the deed of mortgage, but not in his award in respect to the costs of suit. The lopping of a branch of the tree was evidently done merely in token of possession; and as the orders of the moonsiff passed in the summary suit, first in staying execution of the decree, when the regular suit was instituted by Muhanund Mookhopadhya, and then in rejecting respondents' application after that suit had been disposed of, were irregular, for its institution was no bar to the sale of the rights and interests of the debtor in the property attached, I consider that the costs of suit should be borne by each party respectively. I accordingly amend the moonsiff's decision in respect to the costs thus unnecessarily incurred by the parties, and order the costs in this court to be similarly charged to each party respectively.

THE 15TH MARCH 1849.

Case No. 208 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Ahmud, dated the 28th June 1848.

Toolsee Koomar, Mohun Koomar and Rohun Koomar, (Defendants,) Appellants,

versus

Kanaiya Bazpaee, (Plaintiff,) Respondent.

THIS suit was instituted on the 7th September 1847, to recover the sum of Company's rupees 60-5-11, the amount due on a bond alleged to have been executed in the plaintiff's favor, under date the 3rd Sawun 1252 B. S., by the defendants' (appellants') father, Puddum Koomar, deceased, in acknowledgment of a debt of rupees 45.

The defendants, in answer, denied the bond, and pleaded that on the date in question, their father was so ill as to be unable to transact any business, and he died in the following month.

The moonsiff recorded that the defendants at first filed, through their vakeel, the names of six witnesses, which they afterwards repudiated, alleging that their vakeel had been tampered with by

the other party and had put in false names; that he had found on enquiry that there were no grounds for the imputation, and consequently fined the defendants in the sum of rupees 2; that nevertheless to meet objections, he had allowed them to file the names of fresh witnesses, three of whom they produced, but the evidence of these witnesses showed that they had been tutored; and he therefore rejected it, and, considering the execution of the disputed bond by the defendants' father satisfactorily proved by the evidence of the subscribing witness examined on the part of the plaintiff, he decreed the suit in his favor.

On perusal of the record and the petition of appeal, I can find no grounds for impugning the correctness or justness of the decision, which is hereby confirmed; but the moonsiff will be informed that, having acquitted the defendants' vakeel of the charge brought against him, it was irregular to allow them to file the names of fresh witnesses.

THE 16TH MARCH 1849.

Case No. 211 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpore, Moulvee Atta Allee, dated the 7th August 1848.

Rukhyakur Mookhopadhya, (Defendant,) Appellant,

versus

Radhakunth Mundul, (Plaintiff,) Respondent.

THIS suit was instituted under Regulation VIII. 1831, on the 29th December 1847, for replevin of distraint.

The plaintiff stated that he held in mouzah Hureedaspore 29 biggahs and 18 cottahs of land at a jumma of rupees 18, which he paid to the 9 annas and 7 annas shareholders of the estate separately; that the defendant, Rukhyakur Mookhopadhya, the farmer of the 7 annas share, had distrained his crops, to recover a demand for part of 1253 B. S., amounting to rupees 27-12, but the rent due from him for the entire year on this share of the estate did not exceed rupees 8, out of which he had already paid the farmer 4 rupees.

The defendant, in answer, pleaded that the plaintiff held in mouzah Hureedaspore 53 biggahs 9 cottahs of land, at a jumma of Sicca rupees 83, for 7 annas share of which, or rupees 36-5, he executed a kubooleeut in 1252, and the distraint was made in accordance therewith.

The defendant failed to adduce proof in support of his answer, though it was duly called for on the 7th June 1848. The moonsiff therefore gave the plaintiff, whose statement was proved by the evidence of three witnesses, a decree. And there being no grounds for interference with the decision, the same is hereby confirmed.

THE 16TH MARCH 1849.

Case No. 212 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpore, Moulvee Atta Allee, dated the 9th August 1848.

Bukronath Ghosal, (Plaintiff,) Appellant,

versus

Rumzoo Putanee, Megoo Khan, and Dookhun Khan, (Defendants,) Respondents.

THIS suit was instituted on the 29th January 1848, to recover the sum of Company's rupees 4-12, being the value of 1 *map*, 4 *sulees*, and 4 *pies* of rice, for which the defendants, Rumzoo Putanee and Megoo Khan, her son, are alleged to have taken from plaintiff, by the hands of the defendant, Dookhun Khan, an advance of rupees 4 in the month of Aughun 1253 B. S.

The defendant Dookhun Khan, in answer, acknowledged having received the advance, and pleaded that he had delivered to plaintiff the full quantity of rice demanded. The defendant Rumzoo Putanee denied having any thing to do with the transaction.

The moonsiff dismissed the plaint, on the grounds that the plea urged by the defendant, Dookhun Khan, was satisfactorily proved by the evidence of three witnesses. And being of opinion, on perusal of the record and the petition of appeal, that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I hereby confirm it.

THE 17TH MARCH 1849.

Case No. 218 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree, Neel Madhub Mookeerjea, dated the 18th August 1848.

Puncharam Mundul, (Plaintiff,) Appellant,

versus

Gopal Mundul, Seeboo Mundul, Nirunjun Mundul, and Jugunnath Mundul, (Defendants,) Respondents.

THIS suit was instituted on the 10th March 1848, to recover the sum of Company's rupees 63-6-11, being the balance due on a bond executed by the defendants in favor of plaintiff, under date the 24th Bysack 1243 B. S.

The original amount of the bond was rupees 91, of which rupees 73 is admitted to have been paid.

The defendants acknowledged the bond, and pleaded payment in full. They stated that, after paying the amount borrowed under the disputed bond, they executed another bond in plaintiff's favor, dated the 4th Assin 1250, for the sum of rupees 32, which included

rupees 16, due as interest on account of the former transaction; that this bond they had also discharged in full and had received it back, but the first bond the plaintiff retained on the excuse that it had been destroyed; that they had subsequently given plaintiff a third bond, dated the 24th Assin 1251, for 14 *beeses* of paddy, which they had likewise paid: and they observed that if the amount of the first bond had not been discharged, it was unlikely that plaintiff would have waited so long without suing for the money, and that he had preferred the claim in a spirit of revenge, because they had refused to give false evidence in his favor in a case regarding the possession of a tank.

The plaintiff, in his reply, denied the bond for rupees 32, but acknowledged the one executed on account of the grain, saying there was money still due to him on it, though he had returned the document to the defendants.

The moonsiff found it proved by the evidence of two of the subscribing witnesses to the disputed bond, that the amount thereof had been paid in full, and that the second bond for rupees 32, to which they were also subscribing witnesses, was executed under the circumstances stated in the answer. He observed that these witnesses were named by both parties, and one of them, Bishunath Raee, a respectable brahmun, was the writer of both of the deeds, which he had duly attested; and the remaining witnesses examined on the part of the plaintiff deposed to nothing affecting their testimony. He therefore dismissed the claim. And finding no sufficient grounds for impugning the correctness or justness of the decision, which is in conformity with the record, I hereby confirm it.

THE 19TH MARCH 1849.

Case No. 234 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, dated the 1st September 1848.

Sheikh Mahomed Bhikun, (Plaintiff,) Appellant,

versus

Ram Chunder Singh, Gopal Muhuree, Narain Dutt, Bukrunath Das, Muhuree Balaee Dutt, Kenaram Chukurbuttee, Kishto Churn Das, Dwarkanath So, Buddun Chunder Chukurbuttee, Puran Dutt, Jugubundhoo Mitree, Gopal Poitundee, Kartik Ghose, Kalee Gorain, Becharam Gorain, Poora Mosan, Becha Chasa, Bindrabun Chasa, Kenaram Bagdee, Boirub Das, Haradhun Kyburt, and Ram Kyburt, (Defendants,) Respondents.

THIS suit was instituted on the 15th September 1845, to recover possession of 360 beegahs of jungle, situated in mouzah Madhaipore, lot Lukheepore, and the value of timber and firewood: value of suit for the plaint Company's rupees 649-1.

The plaintiff Mahomed Bhikun, the zemindar of lot Lukheepore, which was acquired by him by private purchase, had instituted two cases before the magistrate under Act IV. of 1840, the one against the present defendants for possession of 55 beegahs, and the other against Rampurshad Raee and others, for possession of 41 beegahs of jungle, situated in mouzah Madhaipore, and both of them were rejected by the magistrate, because the boundaries of the jungle claimed had not been duly set forth. He then instituted two suits in the civil court, namely, the present suit and another mentioned in the report, on the case No. 235 of 1848 (decided this day.) In the present suit he alleged that the defendants, who are inhabitants of the neighbouring villages of Gohalara, Ukburpore, and Tanteepara, had dispossessed him of 360 beegahs of jungle, or 305 in excess of the quantity originally sued for in the foujdaree court, and had cut down and appropriated the whole of the timber and firewood, valued at rupees 202-9.

The defendants Ram Chundur Singh, Gopal Muhuree, Narain Dutt, Bukrunath Das, Muhuree and Bulram Dutt, in answer, objected that the area comprised within the boundary marks set forth in the plaint, included 200 beegahs of jungle, belonging to lot Bun-Majeegram, the property of Mudhoosoodun Chatoorjya, putneedar, and 200 beegahs of jungle, belonging to lot Chundurpore, the property of Biprochurn Chukurbuttee, zemindar, who ought to have been made parties to the suit. They denied that they had cut down any of the jungle, but pleaded prescriptive right, on the score of superiority of caste, to as much firewood as their wants required, without payment of rent or fee.

The other defendants did not appear.

The case was put off, pending the decision of the other suit, appealed under No. 235 of 1848, in which Biprochurn Chukurbuttee, the zemindar of lot Chundurpore, was a defendant; and it having been proved in that suit, that the whole of the jungle of mouzah Madhaipore, was the right of Biprochurn Chukurbuttee, this suit, which involved a portion of the same jungle, was necessarily dismissed; and on the same grounds the decision of the lower court is hereby confirmed.

THE 19TH MARCH 1849.

Case No. 235 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, dated the 21st September 1848.

Sheikh Mahomed Bhikun, (Plaintiff,) Appellant,

versus

Biprochurn Chukurbuttee, Ram Purshad Raee, Seeb Purshad Chatoorjya, Namdar Khan, Oma Churn Raee, Jadhoo Raee, Burra Gopal Raee, Koilas Raee, Madhub Chatoorjya, Pureshnath Surma Raee, Puresh Raee, Chota Gopal Raee, Dookhoo Sheikh, Degumbur Raee, Punchanund Raee, Kamoo Sheikh, and Mungloo Khan, (Defendants,) Respondents.

THIS case is the one referred to in the report recorded under the preceding number. It was at first instituted in the principal sudder ameen's court, on the 15th September 1845, on a value of Company's rupees 578-2, to recover possession of 300 biggahs of jungle situated in mouzah Madhaipore, being 259 biggahs in excess of the quantity originally sued for, in a case brought under Act IV. of 1840, which had been rejected by the magistrate; and the defendant Biprochurn Chukurbuttee, who was made a party in the suit, because he had preferred a claim to the disputed jungle in the magistrate's court, having pleaded that the whole of the jungle of mouzah Madhaipore, was his right and in his possession, the plaintiff was nonsuited for under-valuation, under date the 26th March 1847. He consequently re-instituted the suit, on the 7th July 1847, to recover possession of the whole of the jungle of mouzah Madhaipore, estimated at 3,316 biggahs, on the grounds that it was part and parcel of his zemindaree, lot Lukheepore, and in his and his predecessor's possession; and he now valued the suit at rupees 2,928-2, including rupees 328-2, the value of timber and firewood alleged to have been cut down and appropriated by the defendants, Ram Purshad Raee and others.

The defendants, Ram Purshad Raee and others, did not appear or defend the suit.

The defendant Biprochurn Chukurbuttee, in answer, grounded his title to the possession of the disputed jungle on the fact that the *jungle jumma* (in contradistinction to *gram jumma,* or rent of the land) of mouzah Madhaipore, was included in the *hustubood,* or assets, of his zemindaree, lot Chundurpore; and that plaintiff was the proprietor of the gram jumma only.

On that ground the principal sudder ameen dismissed the suit, the point having been satisfactorily proved by a copy of the quinquennial register of 1205 B. S., and copy of the *lotbundee* of lot Chundurpore, of 1207 B. S., in both of which documents the jungle jumma of mouzah Madhaipore, is concluded with the assets of lot Chundurpore; and the plaintiff was unable to produce a single docu-

ment in refutation of that fact. It was also proved by the evidence of several witnesses examined on the part of the defendant, that the disputed jungle had always been in the possession of the zemindars of lot Chundurpore; even some of the ryuts of mouzah Madhaipore, deposed to their having paid jungle jumma to them; and this evidence being supported by documentary proof was considered to be entitled to more credit than the evidence of the witnesses examined on the other side, who deposed to the contrary.

There is no doubt, whatever, in my opinion, of the correctness of the principal sudder ameen's decision. It appears that lot Lukheepore and lot Chundurpore formed part of the zemindaree of the Rajah of Beerbhoom, which was sold in lots by the Board of Revenue in the year 1207 B. S., corresponding with 1800-1 A. D. The lots seem to have been arbitrarily made, an instance of which is recorded at page 337, volume I. of the Select Cases of the Sudder Dewanny Adawlut, Gooroopurshad Bose and others, heirs of Gopal Bose, appellants, *versus* Bisnoochurn Heyra (*quære*, Bustum Churn Hajura,) respondents: in which case the "claim by plaintiff to certain *aurungs*, or iron manufactories, situated within the estate of the defendant in the district of Beerbhoom, and to the proprietory dues levied on the iron ore therein manufactured, was adjudged in favor of the plaintiff; it appearing that the *aurungs* in dispute and the revenue derived from the iron there manufactured, were distinct from the property in the soil; and comprehended in the general *loha muhal* of the late Beerbhoom zemindaree, which muhal the plaintiff had purchased at a public sale." Another instance is afforded by the plaintiff himself, who has filed in this suit a copy of the decision of this court in the case No. 3 of 1845, Ramgobind Chatoorjya, appellant, *versus* Omapurshad Som and others, respondents; which decision shows that the jungle jumma of an entire purgunnah, named Jynojul, was included in the *hustabood* of and sold with lot Shahpore. This latter case is quoted in the reasons of appeal as a precedent in support of the present claim, but it involved merely the identity of a mouzah, which was proved to belong to another pergunnah, and in so far that it recognized the fact that the *jungle jumma* of the mouzahs comprised in the Beerbhoom zemindaree, was sold separately from the *gram jumma*, it tells more against the present claim than in its favor.

The principal sudder ameen's decision is, therefore, hereby confirmed.

THE 20TH MARCH 1849.

Case No. 279 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Ahmud, dated the 27th November 1848.

Dato Mundul, (Defendant,) Appellant,

versus

Mohun Singh, (Plaintiff,) Respondent.

THIS suit was instituted on the 14th July 1848, to recover the sum of Company's rupees 24-2, principal and interest, being the amount due on a bond executed by the defendant in the plaintiff's favor, under date the 20th Jeit 1252 B. S., on account of a former debt, amounting to Sicca rupees 16-9-7, or Company's rupees 17-11.

The defendant, in answer, acknowledged the bond, but pleaded that the amount thereof included the sum of rupees 11, which he was to receive in cash, but which plaintiff never paid, and that he had delivered to plaintiff 8 maunds of rice in payment of his old debt, which amounted to rupees 5-5-7 only: there was consequently nothing due from him.

The moonsiff found it proved by the evidence of the attesting witnesses, that the bond was executed on account of a former debt, as stated in the deed itself; and the defendant having failed to prove the pleas advanced in his answer, he gave the plaintiff a decree. And there being no grounds for interference with the decision, which is in conformity with the record, the same is hereby confirmed.

THE 21ST MARCH 1849.

Case No. 156 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Amduhra, Gholam Buttool, dated the 31*st May* 1848.

Lokaee Gope, (Defendant,) Appellant,

versus

Seebnath Dey, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 1st February 1848, to recover the sum of Company's rupees 24-8-6, the amount due on a bond executed in his favor by appellant, under date the 10th Assin 1251 B. S., in acknowledgment of an advance of Company's rupees 17-8, which was to have been repaid in *goor* (raw sugar) in the months of Phalgoon and Chyte following.

The appellant, in answer, admitted the bond, and stated that, according to custom in respondent's family, all money transactions were made in the name of the senior member; that at the time he took the advance, respondent was living in family partnership with his brother, Sreeram Dey, and being the elder, the bond was executed in

his name; that in 1252, the two brothers separated and both of them requested him to pay them what was due on the bond in equal shares; that he had previously delivered to them, in the month of Chyte 1251, 3½ pots of goor, and in the month of Chyte 1253, according to the arrangement they had made with him, he delivered 5 pots to each, but respondent refused to come to a settlement of accounts.

The respondent, in reply, denied the facts set forth in the answer, observing that the value of 13½ pots of goor did not exceed rupees 10-2.

The moonsiff rejected the appellant's pleas, on the grounds of discrepancies in the evidence of the four witnesses adduced by him; and he accordingly decreed the suit in favor of respondent in full of his claim.

I can find no discrepancies in the evidence myself. The witnesses, one of whom attested the bond, satisfactorily prove, in my opinion, the delivery to respondent of 3½ pots of goor in 1251, and 5 pots in 1253. Regarding the 5 pots of goor alleged to have been delivered to respondent's brother, which appears to be the origin of the dispute, for his brother's widow has filed a petition of claim in this court, I pass no opinion, appellants having failed to prove that respondent had authorized him to make the delivery. The bond having been executed in respondent's name and produced by him, he is entitled to a decree for the amount due thereon, less the value of the 8½ pots of goor delivered to him, at the rate of 1 rupee 12 annas the pot, as proved in evidence, and I amend the moonsiff's decree accordingly. The costs of suit in both courts to be charged to the parties in proportion to the amount of claim decreed and dismissed.

THE 21ST MARCH 1849.

Case No. 162 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doob rajpore, Moulvee Atta Allee, dated the 19th June 1848.

Gooroo Churn So, (Plaintiff,) Appellant,

versus

Rampershad Mitr, Durp Narayun Raee, Ram Gobind Raee, Indur Narayun Raee, Ashuk Dad Khan, Alee Buksh Khan, Peer Khan, Puncharam Chowkeedar, Gopal So, Fuzul Khan, Ajoodeeram Misr, Amjud Khan, and Seeb Narayun Rout, (Defendants,) Respondents.

THIS suit was instituted by the appellant, on the 2nd August 1847, to recover possession of 14 head of cattle, or their value, Company's rupees 40-3.

The plaint sets forth that, in execution of a summary decree awarded under Regulation VII. 1799, in favor of Rampershad Mitr and Durp Narayun Mahato, putnee talookdars of mouzah Hookumapore

against Ashuk Dad Khan, Alee Buksh Khan, and Peer Khan, 42 head of cattle belonging to the debtors were attached at the instance of their securities, Ram Gobind Race and Indur Narayun Race, and placed in charge of Puncharam Chowkeedar, as surety; but when they came to be sold only 28 were forthcoming, upon which the surety, in collusion with the decree-holders, seized 14 head of cattle belonging to appellant and got them sold for the sum of rupees 40-3; that appellant had nothing to do with the decree and his cattle were not included in the original attachment; and as the collector had declined affording him redress, he instituted the present claim, making all the parties concerned, including the purchasers, defendants in the suit.

The respondents, Rampershad Mitr and Durp Narayun Mahato (decree-holders,) in answer denied that they had caused the attachment, or that they were present at the sale, and contended that appellant should seek his remedy from the debtor's securities alone.

Ashuk Dad Khan, one of the debtors, in answer, denied his responsibility. The other defendants did not defend the suit.

The moonsiff found that the appellant's cattle had been illegally seized and sold in place of the cattle originally attached, and that the decree-holders had received the proceeds of the sale in execution of their decree; but he released them from responsibility, on the grounds that the seizure had been made, not by these, but by the surety, Puncharam Chowkeedar, and he decreed the suit against the said Puncharam Chowkeedar and the debtors, as being the party who benefited by the sale.

This decision is wrong on the face of it. The decree-holders were the party, who derived substantial benefit by the receipt of the proceeds of the sale, and they are clearly liable in my opinion. I therefore amend the moonsiff's decision, by making them responsible for the claim and the costs of suit in both courts.

THE 27TH MARCH 1849.

Case No. 255 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, dated the 19*th September* 1848.

Tara Churn Mookhopadhya, (Defendant,) Appellant,

versus

Urnopoorna Ghoshaminee and Race Munee Ghoshaminee, guardians, on the part of Binod Beharee Ghoshaminee, minor, (Plaintiffs,) Respondents.

THIS suit was instituted on the 27th May 1847, corresponding with the 14th Jeit 1254 B. S., to recover possession of the putnee tenure of a 1 anna, 15 gundahs, 2 cowries, and 1 krant share of a

moiety of lot Burura, with wasilaut, or mesne profits, from 1243 to 1253 B. S.

The suit was valued at Company's rupees 3,848-8-7, viz. rupees 1,388-13-8, the value of the putnee tenure, rupees 1,527-11-10, wasilaut, and rupees 931-15-1, interest thereon.

The plaint sets forth that the zemindaree lot Burura, bearing a sudder jumma of rupees 4,457-15-11, was the property of Radhanath Chukurbuttee and Petumbur Mitree, deceased, who divided it between them in equal shares by private partition; that the share of Petumbur Mitree, comprising Hoodah Burura, &c., 17 mouzahs, was again sub-divided between his successors, who received shares as follows:

	as.	gs.	c.	k.
Chedam Chund Mitree, Gooroo Purshad Mitree, and Sham Soondur Mitree,........................	8	17	3	0
Ram Kanth Mitree,....................................	1	15	2	1
Dwarkanath Mitree,....................................	1	15	2	1
Muthoranath Mitree,..................................	1	15	2	1
Rooknee Kanth Mitree and Ruthee Kanth Mitree, sons of Sree Kanth Mitree,.......................	1	15	2	1

That on the 25th Maugh 1238, Ram Kanth Mitree, Muthoranath Mitree's heir, Chundurabutee Dasya and Sree Kanth Mitree's two sons, Rooknee Kanth and Ruthee Kanth Mitree, sold their respective shares in putnee to Nund Lal Ghoshaminee, the husband of the plaintiff, Urnopoorna Ghoshaminee and the son of the plaintiff, Raee Munee Ghoshaminee, under two separate deeds of sale, the jumma on each share being fixed at 115 rupees, and he had undisturbed possession of the tenure from that date up to the month of Srabon 1243, when the defendant, Tara Churn Mookhopadhya, ousted him on the grounds of his having purchased Ram Kanth's and Rooknee Kanth's shares in the zemindaree at a public sale, held in satisfaction of arrears of abkaree revenue due to Government from a defaulter, for whom they had stood security. That Nund Lal Ghoshaminee was prepared to sue to recover his rights, when he died in the year 1249, leaving a minor son as his heir. That Ruthee Kanth was not security for the defaulter, and as the sale of the rights and interests of Ram Kanth and Ruthee Kanth in the zemindaree could not affect the validity of the putnee tenure, which was granted four years before the date of the security bond on account of which the sale was held, plaintiffs, as the guardians of the minor son of Nund Lal Ghoshaminee, now instituted two suits to recover possession, namely, the present suit in virtue of the deed of sale executed by Rooknee Kanth and Ruthee Kanth, the latter of whom was made a defendant, and the suit appealed under No. 257 of 1848, in virtue of the deed of sale executed by Ram Kanth Mitree.

The defendant, Tara Churn Mookhopadhya, in answer, pleaded that, the sale having been held for the recovery of abkaree revenue due

to Government, the putnee tenure, even if it were true, became void, but the alleged tenure was false and collusive, the claim having been got up by Gooroopurshad Mitree (one of the heirs of Petumbur Mitree) to suit his own ends; that Nund Lal Ghoshaminee never had possession of the tenure, as would be proved by the return of the nazir of the collector's office, made at the time the security bond was executed, as well as by the records of a suit, No. 1 of 1841, instituted against him (defendant) by Chedam Chund Mitree and others, and decided by the late sudder ameen on the 31st December 1841, for in neither the one nor the other was any mention of the alleged putnee made: moreover, no claim was preferred on the plaintiff's part, on the issue by the collector of the proclamation of sale; and the fact of the suit having been now preferred after a lapse of nearly twelve years, was sufficient to stamp it as false. That the allegation that Ruthee Kanth was not security was untenable, for his name was current in the zemindaree, and the whole of the share was pledged; and he added that the demand for wasilaut was groundless, since there was no foundation for the suit itself, but the amount demanded was excessive, for the disputed share did not pay the costs of management.

Ruthee Kanth Mitree filed an answer in support of the plaint.

The principal sudder ameen found that it was satisfactorily proved, by the evidence of the witnesses adduced on the part of the plaintiffs, that Rooknee Kanth and Ruthee Kanth gave the disputed share in putnee to Nund Lal Ghoshaminee, under a deed of sale, dated the 15th Maugh 1238, at a jumma of 115 rupees, and that Nund Lal Ghoshaminee had possession of the tenure up to the month of Sawun 1243, when he was dispossessed by the defendant, Tara Churn Mookhopadhya, on the grounds of his having purchased the rights and interests of the zemindars at a public sale. He found also, in support of that evidence, that, on the occasion of the attachment of the shares of Rooknee Kanth and Ram Kanth in the zemindaree, in execution of a decree awarded against them in favor of Asootosh Dey and others, Nund Lal Ghoshaminee presented to the court a petition, claiming possession of the putnee tenure now disputed, and filed the disputed deed of sale in support of his claim, under date the 11th July 1835, corresponding with the 3rd Sawun 1242 B. S., being prior to the execution of the security bond, which bore date the 17th Asin 1242, and that the claim was duly admitted by the late principal sudder ameen, on the 6th August 1836. That Nund Lal Ghoshaminee's claim to the possession of the putnee tenure was similarly admitted by the judge, on the 30th August 1837, (on the occasion of the attachment of the said shares by another decree-holder, Roop Chund Sirkar,) simultaneously with a claim preferred by the defendant, Tara Churn Mookhopadhya himself, who had in the mean time become a purchaser at the public sale; and moreover, that Nund Lal Ghoshaminee had filed a petition of claim in the collector's office,

under date the 19th Poos 1242, after the sale had taken place, on which an order was passed to the effect that the rights and interests of the securities had alone been disposed of.

He recorded that the evidence adduced on the part of the defendant, Tara Churn Mookhopadhya, was insufficient to refute the claim. He had filed a copy of the decision referred to in his answer, passed in case No. 1 of 1841, Chedam Chund Mitree and others, plaintiffs, *versus* Tara Churn Mookhopadhya and others, defendants, under date the 31st December 1841; copy of a summary decision passed under Regulation V. 1812, on the 14th March 1839, in the case of Rampurshad Ghose, plaintiff, *versus* Tara Churn Mookhopadhya, defendant; copy of a petition presented to the collector by Rampurshad Ghose, under date the 25th Aughun 1245 B. S.; copy of a petition similarly presented by Chedam Chund Mitree, under date the 22nd Phalgoon of that year; and copy of the evidence of Prankishto Mitree, given under date the 27th December 1842, in a summary suit instituted by Asootosh Dey, all of which documents were relied on by the defendant, because no mention of any putnee was made in them; but they were all dated subsequently to the date of dispossession, and neither Nund Lal Ghoshaminee nor plaintiffs were a party in any one of the cases they related to. The defendant had also produced two witnesses to prove that Nund Lal Ghoshaminee never had possession of the tenure, also two receipts for rent and three pottahs alleged to have been granted to ryuts in 1239 B. S., but which had not been authenticated. Such negative evidence was not calculated to set aside the positive evidence adduced by the other party; and the principal sudder ameen, therefore, decreed to plaintiffs possession of the disputed tenure, together with wasilaut to the amount of the principal sum of Company's rupees 1,369-2-3, as proved by a local enquiry made by an ameen, and costs of suit in proportion.

The defendant, Tara Churn Mookhopadhya, appeals from this decision, on the same pleas as those advanced in his answer. The plaintiffs have also filed a petition, objecting to their not having been allowed interest on the wasilaut; but it is unusual to allow such. And finding no sufficient grounds for impugning the correctness or justness of the decision, which is in conformity with the record, the same is hereby confirmed.

THE 27TH MARCH 1849.

Case No. 257 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, dated the 19*th September* 1848.

Tara Churn Mookhopadhya, (Defendant,) Appellant,

versus

Urnopoorna Ghoshaminee and Racee Munee Ghoshaminee, guardians, on the part of Binod Beharee Ghoshaminee, minor, (Plaintiffs,) Respondents.

THIS suit was instituted on the 8th June 1847, corresponding with the 26th Jeit 1254 B. S., to recover possession of the putnee tenure of a 1 *anna*, 15 *gundahs*, 2 *cowries*, and 1 *krant* share of a moiety of lot Burura, with wasilaut from 1243 to 1253 B. S.

The circumstances of the case, the pleadings of the parties, and the decision of the principal sudder ameen, are, *cæteris paribus*, the same as recorded under case No. 255 of 1848, decided this day, and the judgment of the lower court is hereby confirmed on the same grounds.

THE 28TH MARCH 1849.

Case No. 260 of 1848.

Regular Appeal from the decision of the Moonsiff of Doobrajpore, Moulvee Atta Alee, dated the 11*th November* 1848.

Benee Madhub Mahato, (Defendant,) Appellant,

versus

Mukoond Ram Naik, (Plaintiff,) Respondent.

THIS suit was instituted on the 7th January 1848, to recover the sum of 25 rupees.

The plaintiff stated that, in the month of Bysack 1253, during his absence from home, his son, Nubo Kishor, a minor, lent the defendant without authority the sum of 25 rupees; that he immediately demanded the money back on hearing of the matter, and the defendant promised to refund it within a month, but he failed to do so, and hence the necessity of this action.

The defendant, in answer, denied the claim, and pleaded that, in the month of Sawun 1253, plaintiff's son gave him the sum of 1 rupee 3 annas, being the balance of an account which had been duly adjusted in the presence of respectable persons on perusal of plaintiff's ledger, and no mention of this debt was then made; and that the claim had been got up in consequence of his having instituted a suit against plaintiff, to recover arrears of rent due on a homestead in his occupation.

The moonsiff decreed the suit in favor of plaintiff, on the grounds that the loan of the money and the subsequent demand and promise to pay were satisfactorily proved by the evidence of five witnesses produced on the part of the plaintiff, and two witnesses produced on the part of the defendant himself, and that the defendant had altogether failed to prove his plea, relative to the adjustment of accounts alleged to have taken place in Sawun 1253, and moreover the plea was not supported by plaintiff's account-book, which had been called for at the defendant's own request.

The defendant objects, in the reasons of appeal, that the account-book had been altered by plaintiff, but there appears to be no ground whatever for the imputation. And entertaining no doubt as to the correctness or justness of the decision, I hereby confirm it.

THE 28TH MARCH 1848.

Case No. 281 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhree, dated the 4th November 1848.

Ramjoy Khan and Sreeram Khan, (Defendants,) Appellants,

versus

Ramdhun Naik, (Plaintiff,) Respondent.

THIS suit was instituted on the 16th August 1847, to recover the sum of Company's rupees 107-8-9, principal and interest, on a bond bearing date the 21st Chyte 1247 B. S., executed in favor of the plaintiff by the defendants (appellants,) in acknowledgment of a loan of 61 rupees.

On the 18th January 1848, after the bond had been produced, and when the plaintiff's witnesses were being examined, the defendants (who had appeared by vakeel, but had up to that time neglected to file an answer,) put in a petition, admitting that they had executed the bond for 61 rupees, but objecting that they had received only the sum of 30 rupees in consideration thereof, of which amount they had repaid all, save rupees 3-8, and that the bond had been tampered with, the names of the two witnesses whom the plaintiff had produced having been fraudulently added to the deed after execution; but the moonsiff refused to admit the petition, and decreed the suit *exparte*, under date the 23rd February 1848.

On appeal preferred by the defendants, the case was remanded by me, (see printed Decisions of this court for 1848, page 107,) with directions to the moonsiff to enquire into the objection as to the bond having been tampered with, which objection could not have been taken until the document was produced, and this the moonsiff has accordingly done, entering at the same time into the defendants' plea of payment.

In support of the objection the defendants produced two of the subscribing witnesses to the bond, Kenaram Chatoorjya and Pran Khan, and another witness, Doorgachurn Naik, who is said to have been present at its execution but who did not attest the deed, and they deposed that the bond was executed by the defendants, in consideration of an old debt to the amount of 31 rupees and a cash payment of 30 rupees, and that the the two witnesses produced by the plaintiff were not present at the execution. The moonsiff, therefore, though he admitted the possibility of the latter fact, the names of the two witnesses being apparently written in ink differing in color from the rest of the document, was of opinion that, as the defendants had thus by their own showing received valuable consideration for the bond, the deed was valid with reference to clause 15, Regulation III. 1793; and finding the plea of payment not proved, for the evidence of the witnesses produced in support of that point was mainly hearsay, and they were unable to state whether the alleged payments, which were unsupported by vouchers, were made on account of the disputed bond, or on account of another loan transaction which had taken place between the same parties, he gave the plaintiff a decree in full of his claim.

This decision I confirm, being of opinion on perusal of the record and petition of appeal that no sufficient grounds have been shown to impugn its correctness.

THE 31ST MARCH 1849.

Case No. 1 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhree, dated the 20th November 1848.

Gyaram Chatoorjya, (Defendant,) Appellant,

versus

Ram Mohun Bhuttacharj, (Plaintiff,) Respondent.

THIS suit was instituted, on the 19th February 1848, to recover the sum of Company's rupees 13-8, being the amount balance due on a bond executed by the defendant in the plaintiff's favor, under date the 6th Poos 1251.

The defendant, in answer, acknowledged the bond, and pleaded payment in full.

The moonsiff was dissatisfied with the parol evidence adduced in support of the answer, on the score of its being contradictory, and he, therefore, gave the plaintiff a decree for the amount of his claim. And being of opinion, on perusal of the record and petition of appeal, that no sufficient grounds have been shewn for interference with the decision, I hereby confirm it.

ZILLAH BEHAR.

PRESENT: W. M. DIROM, ESQ., OFFICIATING ADDITIONAL JUDGE.

THE 19TH MARCH 1849.

Case No. 55 of 1847.

Appeal against a decree passed by Sheikh Kassim Ally, Additional Moonsiff of Gya, on the 3rd February 1847.

Baboo Ram Bahadoor Singh, Lall Bahadoor Singh, Udur Pertaub Singh, and Bhowanee Pertaub Singh, after the death of Ram Bahadoor Singh, his heir, Baboo Udur Pertaub Singh, (Plaintiffs,) Appellants,

Lalla Kalee Pershaud, tenant, Musst. Mulho, wife of Gunnessee, gardener, deceased, and mother and guardian of Chukouree, minor son of the said Gunnessee, (Defendants,) Respondents. Maharanee Inderjeet Kooner, wife of Maharajah Hetnurain Singh Bahadoor, Claimant.

THIS suit was instituted on the 8th February 1845, to recover the sum of rupees 14-11-5, due on account current, as the rent of 3 biswas 3 dhoors of land in Kutrah Baugh, known by the name of Rajah Nurain Singh.

The plaint sets forth that this ground is the ancestral property of the plaintiffs, that the defendant Gunnessee farmed it from time to time, but in the agreement with him a proviso was made that he should not make over any of the land to another party, without the lease being signed by the proprietors. Gunnessee took a lease of 3 biswas 3 dhoors of the land from Musst. Sooruj Bunsee Kooner, wife of Baboo Rughoobur Dyal Singh, deceased, brother of the plaintiffs, and built a house upon it, and agreed to pay a rent of 3 annas per biswa *per annum*. On the death of the lady, the plaintiff succeeded to her estate, and the defendant Kalee Pershaud inhabits the house, but he will neither pay the rent nor enter into any agreement.

The defendant Kalee Pershaud pleads that he took a lease of the land from Doolar Pattuk, the agent of Musst. Sooruj Bunsee Kooner, that it was signed by the said agent and by Gunnessee the farmer, that he built a house on the land, and, as the tenant, has regularly paid the rent for the last twelve years; further, that he is willing to pay the usual rent, but the plaintiffs want an enhanced rent; up to 1250 F. he has paid the rent according to the pottah, and is ready to pay it for 1251, but the mooktear of the plaintiffs will not take the rent, as he wishes to get a higher rent. Gunnessee had nothing to do with the agreement.

The moonsiff decides as follows: at the request of the vakeel of the defendants, he called for the record of another case, to compare the handwriting of Doolar Pattuk; and although the witnesses of the plaintiffs give evidence in support of their claim, yet in the kuboolecut filed by the plaintiffs no mention is made of Kalee Pershaud, and there is no other proof; further the kuboolecut entered into by Gunnessee was in abeyance, the usual present not having been given. The plaintiffs do not produce any documents executed by Kalee Pershaud, nor do they allege the existence of any, the account current, therefore, cannot be correct. Although the plaintiffs deny the validity of the pottah produced by the defendant, Kalee Pershaud, the evidence of the attesting witnesses prove it, and that more than twelve years have elapsed. He therefore dismisses the case with costs.

In appeal it is urged that the defendants do not deny the claim, but allow it, and only object to the amount claimed, the defendants wish to reduce it, and avoid paying according to the kuboolecut of Gunnessee; the pottah given in by the respondents is not signed by the proprietor, but by an agent, who had no authority to sign it. As to twelve years having expired, only two have elapsed, as Gunessee took the farm in 1232 F., and remained in possession up to 1250, when his wife, Mulho, got possession and built a house upon the land and collected the rent; from Jeit of that year it became khas, consequently only two years had elapsed. Moreover, the witnesses of the (defendants) respondents do not agree, and their (appellants') claim is proved from their witnesses.

Judgment.

In this case the real cause of dispute is the amount of rent to be paid for the land. The respondents do not deny the claim; on the contrary they are willing to pay at the usual rate, but not an enhanced rent. The suit is not barred by the statute of limitation. Considering the reasons given by the lower court for dismissing the suit insufficient, the appeal is decreed, and the case returned to the moonsiff for re-investigation, in order that he may decide the point at issue, viz. how much rent is due by the respondents. The usual order is passed for the refund of stampt paper.

THE 19TH MARCH 1849.

Case No. 59 of 1847.

Appeal from a decree passed by Sheikh Kassim Ally, Additional Moonsiff of Gyah, on the 29th January 1847.

Gosaen Hurlal Geer, Jeeah Singh, and Kesho Singh, (Defendants,) Appellants,

versus

Nema Sahoo and Allum Sahoo, (Plaintiffs,) Respondents.

THIS suit was instituted on the 14th February 1846, to recover rupees 149-5, value of grain and rent of sugar-cane land, &c., the khureef crops of 1251, for land in Chandee, pergunnah Muhair.

The plaint sets forth that the said mouzah is lakhiraj, the property of Gosaen Gunga Geer, deceased, and was let in farm to the plaintiffs under a pottah, dated the 11th July 1827, from 1236 F. to 1244, in consideration of an advance of the sum of rupees 1000 as peshgee; the agreement being that the plaintiffs were to remain in possession until the said advance was discharged. In 1244 the mouzah was resumed by Government, and a temporary settlement was made with Gosaen Hurlal Geer the chelah of Gosaen Gunga Geer; subsequently, on the representation of the plaintiffs, this was modified and an order given that the land should remain in possession of Gosaen Gunga Geer until 1250, and from 1251 it was to remain in the possession of the plaintiffs, until the amount advanced as peshgee was discharged. According to this arrangement they got possession, but the defendants forcibly carried off the crops for 1251, and ousted the plaintiffs' people. A complaint was made to the magistrate, who ordered the plaintiffs to be kept in possession, and a suit was instituted before the moonsiff for the bhuduee crops, for the value of which they got a decree. When the above case was pending before the magistrate, the defendants carried off the khureef crops cultivated by Jeeah Singh, Kesho Singh, and the ryuts, for which no restitution has been made. This suit is therefore instituted to recover the value thereof.

The defendants deny the claim. Jeeah Singh states that he never cultivated the land, and Kesho Singh states that he did cultivate, but that the plaintiffs carried off the crops, for the value of which he was about to complain, but the plaintiffs were before him and instituted this suit; if the claim be just, why did not the plaintiffs include it in the former suit, and not separately, which is forbid in C. O. 11th January 1839.

The moonsiff passes a decree in favor of the plaintiffs, as it is proved by a perwannah of the magistrate that they got possession in Maugh 1251 F., and are consequently entitled to the value of the khureef crops for that year, their claim to which is also established by the oral evidence adduced.

In the appeal nothing more is urged, but that the witnesses prove that the khureef crops were carried off by the plaintiffs.

JUDGMENT.

Had this suit been instituted after the promulgation of the Sudder Court's Circular dated 30th September 1847, the moonsiff's decree must have been reversed, as in that case he ought to have dismissed the case under paragraph 4, of the said Circular, but as the suit was instituted before the date of the orders which have only a prospective effect, there is no reason to disturb the present decree. It is proved that the respondents were in possession during 1251 F., and they are fairly entitled to the value of the crops for that year. The decree is, therefore, upheld, and the appeal dismissed with costs, without issuing notice to the respondents.

THE 20TH MARCH 1849.

Case No. 68 of 1847.

Appeal from a decree passed by Moulvee Mahomed Furreedooddeen, Moonsiff of Aurungabad, on the 16th February 1847.

Baboo Abdool Hossein Khan, (Plaintiff,) Appellant,

versus

Musst. Reshmee, (Defendant,) Respondent.

THIS suit was instituted on the 1st June 1846, to recover the sum of rupees 63, principal and interest, due on a bond, dated the 1st Bysack 1249 F.

The plaint sets forth that the defendant borrowed at two different times Sicca rupees 40, and executed a bond to the effect that the full amount was to be discharged by the end of Jeit, and, if not then paid, she was to attend as a servant. The amount was not paid according to agreement. Although no mention of interest is made in the bond, still it can be recovered after the expiration of the time agreed for payment; therefore the claim of service is relinquished, and this suit instituted to recover principal and interest.

The defendant states, in reply, that she does not owe the money, that she has resided for the last ten years in her husband's house, and could not have borrowed from the plaintiff. In the bond it is stipulated that the amount is to be paid at the end of Jeit, but the year is not mentioned, how therefore can the plaintiff calculate interest from the expiration of the date on which the principal was to have been discharged? It is also stated in the bond that, if the amount be not paid, she (the defendant) is to serve; in opposition to this, the plaintiff claims money.

The moonsiff decides that although the plaintiff puts in a forged document, and attempts to prove its validity by witnesses of the lowest class, there can be no doubt that the bond is forged. At the

time of decision the defendant, her husband, and her father, were present, and from their appearance there can be no doubt that they are very poor, and it is not to be believed that the plaintiff would advance so large a sum to them, and take a bond from the wife instead of from the husband or father. The stipulation made in the bond was, that, if the amount be not paid as agreed, the respondent was to attend as a servant. From these circumstances there can be no doubt that the plaintiff prepared the bond with a view of making the woman serve as a slave girl. The suit is, therefore, dismissed.

The plaintiff urges, in appeal, that the bond was proved by the writer of it and the attesting witnesses, and there is no reason why the wife should not give a bond during the lifetime of her husband and father.

JUDGMENT.

There can be no doubt that the bond filed by the plaintiff in this case is a forgery, and the suit an attempt on his part to obtain the services of the defendant as a slave girl. I consequently agree with the lower court in the reasons given for dismissing it. The decree is upheld, and the appeal dismissed with costs, without issuing notice to the respondent.

THE 21ST MARCH 1849.

Case No. 66 of 1847.

Appeal from a decree passed by Moulvee Mahomed Ally Ushruf, Moonsiff of Behar, on the 17th February 1847.

Musst. Shurfoonnissa *alias* Wajeehah and Musst. Mukhdooma (two Defendants,) Appellants,

in the suit of

Gokul Muhto, (Plaintiff,) Respondent,

versus

Musst. Wuheedeen, wife of Usghur Ally *alias* Dumree, deceased, and guardian of Punnah Ally, his minor son, and Musst. Wujeehah and Musst. Mukhdooma, sister of Meer Usghur Ally, heirs of the Defendant.

THE suit was instituted on the 30th October 1846, to recover rupees 143-13-3, on account of a peshgee, according to a pottah dated the 3rd Poos 1237 F.

The plaint sets forth that Usghur Ally gave a farm of 17 beegahs in mouzah Ghunee Chuk Musourah to the plaintiff, from 1237 to 1245 F., at a jumma of Sicca rupees 13-1 *per annum*, and took from him an advance of rupees 135, as peshgee, and the conditions of the agreement were that the whole amount was to be paid up at

the end of Jeit 1245 F., and, if not paid, the land was to continue as his farm. Another condition was that if the land was resumed by Government, then the peshgee was to be paid by the proprietors. The estate was resumed and settled, the plaintiff remaining in possession. The plaintiff has a pottah signed by Usghur Ally, and receipts executed by Musstn. Wujeehah and Mukhdooma. The estate having fallen in arrears of Government revenue, was about to have been sold on the 8th Aughun 1254 F. This suit is instituted to recover the peshgee from the surplus sale and the heir of the defendants.

The defendants gave no reply in the moonsiff's court.

The moonsiff decides that the plaintiff's claim is proved from the pottah, the account current and receipts, as also from the evidence of the witnesses, and gives a decree for the amount.

Against this decision the appellants urge that they sent their reply with a wukalutnamah to their vakeels at the moonsiff's court, who informed them that the moonsiff would not allow the reply to be filed as the evidence of the witnesses had been taken, consequently they could not file their reply. Moreover, they are not the heirs of Usghur Ally; his wife and his son are his heirs; and the pottah is the act of Usghur Ally, with which they have nothing to do.

JUDGMENT.

The appellants' (defendants') default has in this case been wilful, and the excuse they urge for not having filed their reply in the moonsiff's court is frivolous, and not to be believed. It is clear from their own statement that they did not even send a wukalutnamah until the case was ready for decision, although the case had been pending nearly four months. The appeal is, therefore, dismissed, without issuing notice to the respondents, and the decree is upheld with costs.

THE 21ST MARCH 1849.

Case No. 70 of 1847.

Appeal from a decree passed by Moulvee Abdool Luteef, former Moonsiff of Jehanabad, on the 11th February 1847.

Kalee Pershad Singh, (Plaintiff,) Appellant,

versus

Meer Busharut Ally, (Defendant,) Respondent.

THIS suit was instituted on the 30th June 1846, to recover rupees 31-3, the rent of land to the end of 1253 F., in mouzah Ruggoonathpoor Umthooa and Allypore Umthooa, pergunnah Belhawer.

The plaint sets forth that the said villages were let to the plaintiff in farm by Hatim Zumman for 1253 F., and that the defendant is the cultivator of the lands, and, as usual, cultivated it and made away with the proceeds to the value of rupees 31-3, which he will not pay: hence this suit, according to the putwaree's account.

The defendant states, in his reply, that he did cultivate. For 6 beegahs 15 biswas, the jumma of which is rupees 22-3, he has paid in full, and holds receipts of the plaintiff's umlah, with the exception of rupees 6-3, for which sum they would not give a receipt; this payment he can also establish by witnesses. He further states that he holds 16 beegahs 10 biswas of land, the rent of which is payable in kind—on this the khureef crops were cultivated, and 15 beegahs 1 biswa, on which the rubee crops were cultivated. After the division of the crops had been settled, he gave the proprietor's share to his umlah, for which he holds a receipt: this can be proved by respectable witnesses. The plaintiff instituted this case from enmity.

The moonsiff decides that what the defendant has advanced in his reply, is clearly proved from his witnesses and the receipts filed by him. The plaintiff's suit is false and malicious, as it is clear that, instead of placing the amount paid by the defendant to his credit as rent, he placed the whole to the credit of (ubwabs) illegal imposts, and brings a suit against him for rent due. The farmer cannot claim an enhanced rent from the defendant, who is an old cultivator. The putwaree produced by the plaintiff as a witness is not the real putwaree. The defendant's witnesses are trustworthy but not the plaintiff's. Under these circumstances, the claim is dismissed, and the plaintiff is fined 24 rupees, according to Section 12, Regulation III. of 1793.

In appeal it is urged that the claim is fully proved from the oral and documentary proofs adduced. No illegal imposts have been received; notwithstanding this, the moonsiff dismisses the case and fines the plaintiff.

JUDGMENT.

The moonsiff's decision in this case is just and proper. It is clearly proved from the oral and documentary evidence adduced by the defendant that he paid his rents, the greater portion of which payments the plaintiff (respondent) credited under the head of different ubwabs, or illegal imposts, instead of as rents received from the defendant. The appeal is therefore dismissed with costs, and the decree upheld, without issuing notice to the respondent.

THE 26TH MARCH 1849.

Case No. 76 of 1847.

Appeal from a decree passed by Moulovee Mahomed Abdool Luteef, former Moonsiff of Jehanabad, on the 11*th February* 1847.

Syud Shah Kumul Ally, Musst. Rubehun, Syud Torab Ally, and Syud Abdool Hussun, (Defendants,) Appellants.

versus

Sheikh Ghulam Jeelanee, (Plaintiff,) Respondent.

THIS suit was instituted on the 24th January 1846, for possession, and to have his name registered as proprietor of 17 dam, 15 cowries, 10 bowrees, and more, of mouzah Moyenooddeen Chuck, chuck Kafeeah, and Ballakhunda, pergunnah Bhelawur, lately settled, with malikana, Company's rupees 9-15-11¼, at three times the sudder jumma, also to recover Company's rupees 9-15-11¼, mesne profits from 1251 to 1253 F., appertaining to the estate of the father of Musst. Nuzeerun *alias* Chundah, the plaintiff's wife; in all Company's rupees 19-15-2½.

The plaint sets forth that Meer Ghulam Mukhdoom had five sons, Noor Ally, Kabur Ally, Sheer Ally, Torab Ally *alias* Choolhun, and Khadim Ally, and two daughters, Musst. Wulleehah and Musst. Nuzeerun, who succeeded to their father's estate. Doda Sing and Jye Mangul Sing gave an advance (peshgee) to the amount of rupees 601, and took a farm of the abovementioned village from all of them, from 1229 to 1234 F., paying half of the profits to them; subsequently, the estate was resumed by Government and permanently settled with Torab Ally and others, without including the name of Nuzeerun. They persuaded her to make no objections, and they paid her, her share of the profits. In 1251 F., Musst. Nuzeerun died, leaving her husband, Sheikh Ghulam Jeelanee; and her brothers, Torab Ally and Sheer Ally, her heirs. By the right of his wife, the plaintiff is entitled to a half share, according to which he got possession, and also half of the rent of Buddun Tally. The defendants dispossessed him in 1251 F.: hence the suit.

Defendants urge in their reply that Musst. Nuzeerun has been out of possession for more than twelve years, and never received any of the profits of the land. The defendants have remained in possession all along. The state of the case is, that in 1230 F., Musst Nuzeerun, with the concurrence of all the sharers, agreed to exchange her share of their father's property, *i. e.*, 7 dams, 5¾ cowries of Moyenooddeen Chuck, chuck Kafeeah, and Ballakhunda, for the whole of mouzah Buddun Tally which exchange is mentioned by the defendant Shah Kumul Ally in the settlement paper of Moyenoodeen Chuck, &c., and it is also mentioned in the petition of Torab Ally and Kumul Ally, objecting to the settlement of Furreedpore Kukareeah.

The moonsiff decides that the possession of the plaintiff is fully proved from the settlement proceeding, dated the 29th September 1840, and the farming lease executed by Chundah on the 5th August 1821. The heirs of the said Chundah being the plaintiff and defendants, the law of limitation urged by the defendants does not apply. The defendants have, moreover, adduced no proof, either documents or witnesses, to establish the alleged exchange. The documents they have produced are not to be trusted, as they are evidently fictitious. The moonsiff, being himself acquainted with Mahomedan law, sees no necessity of calling for a futwa, and, being satisfied with the possession of the plaintiff, decreed the claim in his favor.

In appeal it is urged that the settlement was made in the name of Musst. Rubehun, Syud Torab Ally, Syud Abdool Hussun, (some of the appellants,) and Syud Anwur Ally, father of Abdool Hussun abovementioned, and Syud Khadim Ally, and it is stated in the said roobukarree that no one objected. The canoongoe at the request of the plaintiff did enter the name of his wife, Nuzeerun, in the ruqba papers, and it was also casually mentioned in the settlement roobukarree, but this cannot establish the plaintiff's wife's possession.

JUDGMENT.

There is no reason for disturbing the moonsiff's decision in this case. The right of the respondent is clearly established from the settlement proceeding, dated the 29th September 1840, and the farming lease, dated the 5th August 1821, executed by Musst. Nuzeerun *alias* Chundah, the plaintiff's wife, and the other partners or sharers. The defendants have adduced no satisfactory proof, either documentary or oral, in support of the allegations set forth by them. The appeal is therefore dismissed with costs, and the decree upheld, without issuing notice to the respondent.

THE 27TH MARCH 1849.

Case No. 261 of 1847.

Appeal from a decision passed by Syud Tufuzul Hossein, Acting Moonsiff of Gyah, on the 28th August 1847.

Gopee Lal Khuttree, (Plaintiff,) Appellant,

versus

Rada Dhamee, (Defendant,) Respondent.

SUIT instituted on the 10th November 1846, to recover the sum of Company's rupees 31-6, principal and interest, due by khatah buhee, or account-book.

Plaintiff sets forth that the defendant borrowed the sum of rupees 30 from the plaintiff to pay one Beegah Lal, who held a decree against him, and promised to repay the amount on the 30th Bhadon, which he failed to do: hence this suit.

Defendant denies the claim *in toto*.

The moonsiff dismisses the case, on the ground that the evidence adduced by the plaintiff does not prove his claim; neither is it proved that the defendant had any dealings with him before, consequently it is not likely he would lend so large a sum to the defendant, without some document from him to prove the debt.

In appeal it is urged that the claim made by the plaintiff is proved from the witnesses, the khatah buhee, and the ameen's report.

JUDGMENT.

There is no proof whatever of the claim made against the defendant (respondent.) The acting moonsiff's decision, dismissing the case, is therefore correct, and there is no reason to disturb it. The decree is confirmed, and the appeal dismissed, with costs, without issuing notice to the respondent.

THE 29TH MARCH 1849.

Case No. 52 of 1847.

Appeal from a decree passed by Syud Tufuzul Hossein, Acting Sudder Ameen of Behar, on the 9th August 1847.

Damodur Hull, (Defendant,) Appellant, in the suit of Bijee Ram Hull, Plaintiff, on his death, Jugmohun Dheuree, (Plaintiff,) Respondent.

versus

The Appellant, Peeroo, Sungum Singh, Sheikh Uttoo Munear, Rumzanee, Gobind Singh, Dhunkoo, Khemajeet Singh, servants of (Defendant,) Appellant.

THIS suit was instituted on the 2nd December 1845, to recover the sum of rupees 470, the price of a gold necklace.

The plaint sets forth that, on the 24th June 1845, Bijee Ram Hull, the plaintiff, was going from Sahibgunge to his own house; on the road the servants of the defendant abused him, shortly after the defendant himself came up and beat the plaintiff, and ordered his servants to snatch his gold necklace from him, which they did. The plaintiff complained to the magistrate, by whose order the defendant was imprisoned for six months, but the necklace has not been returned: this suit is therefore instituted.

The defendant denies the claim, and states that the suit has arisen from enmity entertained towards him by the plaintiff.

The sudder ameen decides that the snatching of the plaintiff's necklace is clearly proved from the papers filed in the case, from the investigation made by the magistrate, and from the evidence of the witnesses examined by him; that the defendant, who was present, on being interrogated by the court, first admitted having been present at the assault and then denied it; the denial of a person who at the same time admits and denies is worth nothing. The evidence of the goldsmith who made the necklace proves the weight

and value of it as entered in the plaint. A decree is, therefore, passed against Damodur Hull for the full amount of the claim with costs, and the other defendants exempted.

In appeal it is urged that the claim of the plaintiff is based upon the case decided by the magistrate, in which the evidence of the witnesses was contradictory, and the snatching of the necklace was not proved; that the proceeding of the magistrate cannot be received as documentary proof.

JUDGMENT.

The proceedings of the criminal court and the evidence adduced on the part of the respondent in the sudder ameen's court, clearly proved that the appellant's servants, by his order, snatched the necklace from the respondent, and gave it to their master. The appellant, who has failed to establish the alleged discrepancies in the evidence for the prosecution, and has not returned the necklace, is clearly liable for its value. The decree is therefore upheld, and the appeal dismissed, with costs.

THE 30TH MARCH 1849.

Case No. 164 of 1847.

Appeal from a decree passed by Syud Tufuzul Hossein, Acting Moonsiff of Gyah, on the 30th April 1847.

Choonee Lal, (Defendant,) Appellant, in the suit of Mudaree Lal, (Plaintiff,) Respondent,

versus

The Appellant, Bukhoree Lal, the seller, and Choonee Lal, father of Kalee Churn and Kumlah Churn, purchasers of half the seller's share, and Bhowun Roy.

THIS suit was instituted on the 23rd July 1846, for possession of $1\frac{1}{2}$ biswas, half of the land on which a house is built, in mouzah Mujatee, and to cause the same to be vacated, after deducting the half share purchased by others, value 40 rupees.

The plaint sets forth that Bukhoree Lal sold the half share of the land in dispute to plaintiff for rupees 40, after deducting the half share purchased by Choonee Lal, defendant, according to a deed of sale, dated the 26th September 1845; and although he (Bukhoree Lal) has received the whole of the purchase money, he and the other defendants will not give the plaintiff possession: hence this suit.

The defendant Bhowun Roy states that he has all along resided in the house, and cannot be turned out without cause; it was first in the possession of Bukhoree Lal, and is now in possession of Choonee Lal, by purchase; there are not 3 biswas of land attached to the house, how then does the plaintiff claim $1\frac{1}{2}$ biswas?

The defendant Bukhoree Lal states that 2 biswas, 6 dhoors, 6 dhurkees, and a little more, of ryotkhana land, was sold by him to

Choonee Lal, who is in possession of 1 biswa 5 dhoors of it under a deed of exchange, dated the 11th Kartick 1252; the remaining 1 biswa, 1 dhoor, 6 dhurkees he can also take.

The defendant Choonee Lal states, first, that, as the plaintiff's claim does not define the boundaries, it is incorrect; secondly, that the land of Bukhoree Lal in the village amounts to 4 biswas, 16 dhoors, 15 dhurkees according to a division made by the partners. One-half was sold to Doongur Lal, the remaining half is 2 biswas, 8 dhoors, 7 dhurkees; $\frac{3}{4}$ of this, 2 biswas, 6 dhoors, 6 dhurkees, and a little more, on which Bhowun Roy's house stands, was sold to him by Bukhoree Lal. The land does not amount to 3 biswas. Bukhoree Lal resides on 1 biswas, 8 dhoors, 17 dhurkees, in the share of Phoolal Singh. The plaintiff's kuballa is dated 11 months subsequent to his, and is not registered, nor attested by the cazee's seal.

The moonsiff, after interrogating the parties, comes to the following decision, that it is evident from the plaintiff's deed of sale that Bukhoree Lal sold $1\frac{1}{2}$ kottahs of 3 kottahs of land, on which Bhowun Roy's house is built, to the plaintiff, after deducting the share of Choonee Lal, consequently the claim of the plaintiff appears correct, and a decree is passed in his favor.

In appeal it is urged that Bukhoree Lal had no more land to sell, after the purchase made from him by the appellant.

JUDGMENT.

From the deed of sale, filed by the respondent, which there is no reason to suppose an invalid document, it is proved that he purchased half of the land on which the house of Bhowun Roy is built; he is, consequently, entitled to possession. The decree is upheld, and the appeal rejected, with costs, without issuing notice to the respondent.

THE 30TH MARCH 1849.

Case No. 158 of 1847.

Regular Appeal from a decision passed by Syud Tufuzul Hossein, Acting Moonsiff of Gya, dated the 17*th April* 1847.

Choonee Lal, (Defendant,) Appellant,

in the suit of Mudaree Lal, (Plaintiff,) Respondent,

versus

Bukhoree Lal, original proprietor, and Choonee Lal, Appellant, father and guardian of Kallee Churn and Kumlah Churn, purchasers of half the share of Bukhoree Lal, and Bhowun Roy, cultivator on the part of the Defendant.

THIS suit was instituted on the 28th March 1846, for possession, according to a farming pottah, of land, being the half share of

Bukhoree Lal, in the village of Mujatee, pergunnah Kabeer, value rupees 19, his interest in the farm, according to the said pottah, dated 26th September 1845, and rupees 11, annas 2, value of winter and spring crops of 1253 F., in all rupees 30-2.

The plaint sets forth that Bukhoree Lal first let his share in the said mouzah to Choonee Lal, after that he sold half of it to Kalee Churn and Kumlah Churn, sons of Choonee Lal, by a deed of sale, dated 2nd November 1844, and cancelled the farm; subsequently, on the 26th September 1845, Bukhoree Lal sold one and half biswas of land, on which the house of Bhowun Roy and Nihal Roy is built, deducting the share sold to the sons of Choonee Lal, to the plaintiff, and on that date he let the other half share to plaintiff in farm, from 1253 to 1262 F. The defendants will not allow plaintiff to collect his rents: hence this suit.

Defendants Choonee Lal and Bhowun Roy state that, when the second farm was cancelled, Bukhoree Lal, according to a note dated the 29th Assin 1253, assigned to Choonee Lal the land in cultivation, and the land to the east of the village, on which the ryut's houses are built, and quarter share to the west. The remainder of the land to the west Bukhoree Lal kept for himself. The plaintiff's claim against them is not correct. The plaintiff's alleged purchase of one and half biswas, on which Bhowun Roy's house is built, is false; that land is 2 biswas, 1 dhur, and is in Choonee Lal's possession. The plaintiff's object is to get possession of the land on which Bhowun Roy's house stands.

Defendant Bukhoree Lal states that 20 beegahs is his own share, and 10 beegahs, the share of Phoolal Singh, his uncle, is mortgaged to him, all of which he has let in farm to Choonee Lal; subsequently he sold half of his share to Kalee Churn and Kumlah Churn, the sons of Choonee Lal; some time after, to raise money to pay the Government revenue, he sold his half share of the land, on which Bhowun Roy's house is built, to the plaintiff, after deducting that which he had sold to the sons of Choonee Lal, and he let his half share of the land in dispute to the plaintiff. Choonee Lal will not give him possession. Moreover, how can Choonee Lal take only the lands to the east, without a regular division?

The moonsiff decides that there is no dispute regarding the share sold to Choonee Lal; nor does Choonee Lal dispute the plaintiff's farm; the real point at issue appears to be the wish of Choonee Lal to take his purchase out of the 20 beegahs mouroosee, which is not provided for by the deed of sale, and the plaintiff desires that the parties should remain in joint possession. The defendant, on being interrogated by the court, stated that he had purchased 16 beegahs out of the 20 beegahs mouroosee, and had no claim to the other 16 beegahs. The moonsiff considers this

an attempt on his part to establish that he had purchased 16 beegahs out of the 20 beegahs mouroosee, which claim cannot be disposed of in this case. With regard to the claim for mesne profits, one defendant puts it off upon the others. A decree is passed in favor of the plaintiff, for the possession of 16 beegahs out of the whole 32 beegahs, and for mesne profits, from which Choonee Lal is exempted.

In appeal it is urged that a person can only sell his own property, not that of another. The defendant Bukhoree Lal's ancestral share is 20 beegahs, and appellant has possession in the said 20 beegahs, as proved from the note dated 29th Assin 1253.

JUDGMENT.

The decision of the lower court in the case appears to be correct. It is clearly established that the respondent took the farm, and that he is entitled to possession of it, and to mesne profits. The deed of sale in favor of the appellant does not provide that his purchase of 16 beegahs is to be taken out of the 20 beegahs mouroosee; on the contrary it appears that it is to be taken out of the whole 32 beegahs. The decree is upheld, and the appeal dismissed, with costs, without issuing notice to the respondent.

THE 30TH MARCH 1849.

Case No. 159 of 1847.

Appeal against a decree passed by Syud Tufuzul Hossein, Acting Moonsiff of Gyah, on the 17th April 1847.

Bhowun Roy, (Defendant,) Appellant,

in the suit of

Mudaree Lal, (Plaintiff,) Respondent,

versus

The appellant, Bukhoree Lal, and Choonee Lal, father and guardian of Kalee Churn and Kumlah Churn, and Bhowun Roy, Defendants.

THIS case and the preceding one, No. 158, are appeals from the same decision.

JUDGMENT.

For the reasons given in the former case, this decision is also upheld, and the appeal dismissed, with costs, without issuing notice to the respondent.

ZILLAH BHAUGULPORE.

PRESENT : W. S. ALEXANDER, ESQ., JUDGE.

THE 17TH MARCH 1849.

Case No. 3 of 1848.

Appeal from a decision of Baboo Nocoor Chunder Chowdhree, Officiating Principal Sudder Ameen of Bhaugulpore.

Mohun Manjee, and after his decease, Doulut Manjee and two others, (Plaintiffs,) Appellants,

versus

Musst. Radha Sahone, widow of Hoolass Sahoo, deceased, and Mohun Sahoo, (Defendants,) Respondents.

CLAIM, debt on bond: instituted 24th September 1845, decided 18th January 1848.

This was an action to recover a sum of Company's rupees 1,002-5-4, on a bond, bearing date the 11th Kartick 1235. On three occasions payments had been made, and the same noted on the back of the instrument. Hoolass Sahoo, the borrower, had died, and plaintiff now sues his widow, and Mohun Sahoo, her connection, to whom she had assigned all her property by deed of gift.

Mohun Sahoo, in his answer, denies his liability for the debts of Hoolass Sahoo. On the 11th September 1845, Musst. Radha Sahone sold to him, for a consideration of rupees 2,000, the whole of her property, movable and immovable; the deed of sale was registered; and his name recorded in the collector's books.

Musst. Radha Sahone denies all knowledge of the bond.

The principal sudder ameen gave judgment for the plaintiff, against the estate of Hoolass Sahoo, for Company's rupees 984-11-9. With respect to the transaction between Musst. Radha Sahone and Mohun Sahoo, he observes that it is not necessary to enter upon it, because the issue before the court involved only the validity or otherwise of the bond. At the time of executing this decree against the estate of Hoolass Sahoo, any party who may enter objections to the attachment and sale of the property pointed out by the decree-holder, will of course be heard, and the objections disposed of. The plaintiff has adduced no proof to shew that Mohun Sahoo is the heir of Hoolass Sahoo. Mohun, therefore, cannot be made responsible for this debt, and is released accordingly.

The plaintiff has preferred an appeal from that portion of the decision which releases Mohun Sahoo from liability under the decree. The whole of Hoolass Sahoo's property has been made over to him by the deed of gift executed by Radha Sahone.

JUDGMENT.

The bond in this case appears to be a simple one, and Mohun Sahoo is not liable thereon, as heir of the deceased Hoolass Sahoo. I see, therefore, no grounds for interfering with the decision of the principal sudder ameen, which allows the appellant to take out execution against the estate of Hoolass Sahoo, at which period any objections to the sale will be disposed of. The costs of this appeal to be discharged by the appellant.

THE 17TH MARCH 1849.

Case No. 5 of 1848.

Appeal from the decision of Moulvee Mouzzim Hossein, Principal Sudder Ameen of Bhaugulpore.

Gobind Chunder Sircar, (Defendant,) Appellant,

versus

Mr. C. H. Barnes, (Plaintiff,) Respondent.

CLAIM, rent of farm: instituted 3rd July 1847, decided 25th May 1848.

The plaintiff instituted this suit to compel payment of arrears of rent of mouzah Farcha, &c., from Poos 1253 to Jeit 1254. The defendant took a farming lease under the plaintiff, from 1250 F. S. to 1255, at Company's rupees 1,124 *per annum*. On the 6th November 1846, plaintiff obtained a decree of court, for the rent that accrued down to Poos 1253, and he now sues for that accruing from that date to Jeit 1254.

The defendant pleads, in his answer, various sums paid at different periods, amounting to rupees 1,082.

The principal sudder ameen decreed the case in the plaintiff's favor for rupees 1,416.

Against this decision the appellant has preferred an appeal.

JUDGMENT.

The principal sudder ameen has decided this case without requiring the plaintiff to file any evidence in support of his claim, beyond a former decree. The decision must, therefore, be set aside, and the case remanded under the precedent of the Sudder Court, of the 22nd August 1843, Select Reports, vol. VII., page 130. The principal sudder ameen will replace it on his file, and require evidence from the plaintiff in support of his claim. The stamp fees to be returned to the appellant.

THE 19TH MARCH 1849.

Case No. 16 of 1848.

Appeal from the decision of Moulvee Moheeooddeen, Moonsiff of Umeerpore.

Mungun Roy, (Defendant,) Appellant,

versus

Lutchmun Munder, (Plaintiff,) Respondent.

CLAIM, debt on bond: instituted 22nd September 1847, decided 17th January 1848.

This was an action to compel payment of Company's rupees 59-12, principal and interest on a bond, dated the 10th Assin 1254 F. S.

The defendant, in his answer, denied the obligation, and pleaded further that, at the date on which it was alleged by plaintiff he had given the bond, he was absent from his home, and in the Beerbhoom district.

The moonsiff, considering the execution of the bond and the receipt of the money fully established, by the evidence adduced by the plaintiff, gave judgment in his favor.

From this decision the defendant has appealed on general grounds.

JUDGMENT.

The question before the moonsiff was one of facts, and he had the opportunity of personally examining the witnesses brought forward by both parties. I see, therefore, no grounds for interfering with his decision, which is hereby confirmed, with costs to be paid by the appellant.

THE 19TH MARCH 1849.

Case No. 17 of 1848.

Appeal from the decision of Baboo Kistochunder Chowdhree, Moonsiff of Rajmahal.

Rewa Lall, (Plaintiff,) Appellant,

versus

Kasim Ally, (Defendant,) Respondent.

CLAIM, on bond: instituted 7th August 1847, decided 8th January 1848.

This was an action to recover payment of rupees 108-12-8, principal and interest on a bond bearing date the 20th Assin 1243 B. S.

The defendant, in his answer, denies having had any transactions with the plaintiff, though he had some with one Ramdhun Dass.

The moonsiff was of opinion that the execution of the bond was not satisfactorily proved, and the evidence of one witness taken on the issue of a commission by another court, could not be read, nor was it legal evidence under Section 5, Act VII. of 1841. Claim dismissed.

From this decision the plaintiff has appealed, urging, among other grounds, that the evidence of the witness, which was taken by a commission issued by the moonsiff to another court, ought to have been read by the moonsiff, and that it was legal evidence under Section 5, Act VII. of 1841.

JUDGMENT.

The moonsiff has recorded no sufficient reason in his decision for refusing to read the evidence of the witness, for whose examination he issued a commission to a moonsiff in the Moorshedabad jurisdiction, nor has he explained why this evidence is not legal evidence. The case must be remanded to the moonsiff, in order that he may read this evidence or record in his decision the grounds for not receiving it. Order accordingly. The stamp fees to be returned to the appellant.

THE 20TH MARCH 1849.

Case No. 19 of 1848.

Appeal from the decision of Moulvee Mahomed Huneef, first grade Moonsiff of Bhaugulpore.

Chunder Mun Misser, (Defendant,) Appellant,

versus

Bissasur Buggut, (Plaintiff,) Respondent.

CLAIM, debt on bond: instituted 29th, September 1847, decided 20th January 1848.

This was a suit on a bond dated 11th Sawun 1253 F. S.

The defendant admitted the bond, but pleaded its discharge, with the exception of 1 rupee still due to plaintiff. Defendant held plaintiff's receipt.

The moonsiff gave judgment in plaintiff's favor for the sum claimed, 8 rupees, 10 annas, 5 pies. He rejected the receipt produced by the defendant, as the signature of the plaintiff appended to the document did not coincide with his other signatures. The witnesses, moreover, to its execution, were at variance as to the time of day; one stating that plaintiff gave the receipt in the morning, and another stating he gave it in the evening. Further, defendant had set forth, in his answer, that he delivered to the plaintiff 6 maunds of grain; but no mention of this circumstance was entered in the receipt.

From this decision an appeal was preferred.

JUDGMENT.

On an examination of the receipt and the evidence in its support, I see no reason for interfering with the moonsiff's decision. Appeal dismissed with costs.

THE 20TH MARCH 1849.

Case No. 29 of 1848.

Appeal from the decision of Moulvee Akber Ally, Moonsiff of Kishengunge.

Sheebdyal Gope, (Defendant,) Appellant,

versus

Nundee Lal, (Plaintiff,) Respondent.

CLAIM, on note of hand: instituted 4th June 1847, decided 15th January 1848.

The plaint states that, on the 15th January 1844, the defendant took an advance of rupees 13, and contracted to supply indigo seed in the following January, at the rate of rupees 3-8 per maund. Should he fail in the contract, he was to make good in money the price of the seed according to Calcutta rates. Defendant had failed. Plaintiff, therefore, sues for rupees 39-6, being the value of 3 maunds, 27½ seers of seed, at rupees 10 per maund, the selling price in Calcutta.

The defendant denied the transaction altogether.

The moonsiff, considering the note of hand and the receipt of the advance fully proved, decreed the original sum and legal interest thereon, in plaintiff's favor.

From this decision the defendant appealed on general grounds.

JUDGMENT.

On a perusal of the papers of this case, I find no grounds for disturbing the moonsiff's decision, which is hereby confirmed, with costs to be paid by appellant.

THE 21ST MARCH 1849.

Case No. 33 of 1848.

Appeal from the decision of Cazee Ali Buksh, late Sudder Ameen of Monghyr.

Hissamoeddeen, (Plaintiff,) Appellant,

versus

Musst. Chooha, (Defendant,) Respondent.

CLAIM, debt on bond: instituted 15th July 1847, decided 8th January 1848.

The plaint states that Nurcoo Bissattee, the husband of the defendant, borrowed rupees 14-2 from plaintiff, and gave him a bond for the amount, dated 28th Phalgoon 1246 F. S. Nurcoo had died without satisfying the claim, and as his widow is in possession of the effects of deceased, plaintiff sues her for the amount due, viz. rupees 28.

The defendant, in her answer, denies all knowledge of the transaction between plaintiff and her late husband, and pleads further that she is not in possession of any of the deceased's effects: Nurcoo died many years ago in great poverty.

The sudder ameen, moonsiff, gave judgment for the amount claimed against the estate of the deceased, and released the defendant from responsibility under this decree.

From that portion of the decision, releasing Musst. Chooha from responsibility under the decree, the plaintiff has appealed.

JUDGMENT.

The decision of the sudder ameen, moonsiff, on the point appealed against, is quite correct. The widow cannot be made liable for the debts of her husband, from whom she has inherited no property. Appeal dismissed with costs.

THE 21ST MARCH 1849.

Case No. 39 of 1848.

Appeal from the decision of Baboo Kistochunder Chowdhree, Moonsiff of Rajmahal.

Bhageeruth Jha, (Defendant,) Appellant,

versus

Dataram Sahoo, (Plaintiff,) Respondent.

CLAIM, on bond, instituted 21st July 1847, decided 28th January 1848.

This was an action to recover rupees 61-14-5, on an instalment bond, bearing date the 3rd Poos 1251 F. S.

The defendant admits having given the bond, but pleads payment in full. Defendant held the plaintiff's receipt, but unfortunately his house was burnt down, and all his papers destroyed. He had demanded the return of the bond, but plaintiff put him off with various excuses, and he now sues him for the amount already discharged. The moonsiff decreed the full amount, sought to be recovered, in plaintiff's favor.

From this decision the defendant has appealed on general grounds.

JUDGMENT.

The defence set up by the appellant is unsupported by any proof save that of one or two witnesses, who depose to a fire having occurred in his house. I find therefore no grounds for interfering with the decision of the lower court, which is hereby confirmed with costs.

THE 21ST MARCH 1849.

Case No. 40 of 1848.

Appeal from the decision of Moulvee Moheeooddeen, Moonsiff of Ameerpore.

Bancharam Modee, (Defendant,) Appellant,

versus

Sumbhee Sahoo, (Plaintiff,) Respondent.

CLAIM, on bond: instituted 9th September 1847, decided 28th January 1848.

This was an action to recover rupees 14-10-3 on a bond dated 10th Aughun 1254. The defendant received an advance of rupees 13, and agreed to repay the amount in grain, in which, however, he failed. Plaintiff therefore sues him for the sum advanced, with interest.

The defendant states, in his answer, that there had been some transactions between the plaintiff and himself, and plaintiff compelled him to sign the bond: he had, however, satisfied it in full. The moonsiff gave judgment in plaintiff's favor, observing that the defence set up was wholly untenable.

From this decision the defendant has appealed, urging, among other grounds, that the moonsiff had not heard his witnesses.

JUDGMENT.

On a perusal of the record it appears that the defendant produced two witnesses, one of whom was altogether ignorant of the transaction, and the other was not the party named in the summons. After this, the defendant took no further steps, and the case came on for decision. Under these circumstances I see no necessity for remanding the case for further investigation. Appeal dismissed, and the decision of the moonsiff confirmed with costs.

THE 23RD MARCH 1849.

Case No. 43 of 1848.

Appeal from the decision of Moulvee Moheeooddeen, Moonsiff of Ameerpore.

Musst. Ranee Neela Buttee, (one of the defendants,) Appellant,

versus

Mohun Manjee and others, (Plaintiffs,) Respondents.

CLAIM, on note of hand: instituted 6th November 1847, decided 8th February 1848.

The plaint states that, on the 18th Chyte 1247 F. S., the defendant, Neela Buttee, borrowed through her agent, Kashenath

Chowdhree, Sicca rupees 100 from Shunker Manjee, and gave him a note of hand, promising to repay the amount with legal interest in the month of Poos 1248. Shunker Manjee died in Bhadoon 1251, leaving the plaintiffs, his heirs, surviving him. The defendants have failed in their engagement, and plaintiffs sue to recover Company's rupees 204-12-9. Kashenath Chowdhree did not appear to defend the suit. Musst. Ranee Neela Buttee entered an appearance, but her vakeel, under his client's instructions, filed no answer.

The moonsiff, on the evidence adduced by the plaintiffs, gave judgment in their favor for the full amount of the claim with costs.

From this decision Musst. Ranee Neela Buttee has appealed, urging that, on the 13th Maugh 1255, the claim, the subject of this suit, had been adjusted between herself and Musst. Sundroo, the widow of Shunker Manjee, deceased.

JUDGMENT.

The plea now urged should have been pleaded in the court of first instance; it cannot be attended to at this stage of the case. The appellant allowed judgment to go against her in the lower court, though she had an opportunity of defending the action. The decision of the moonsiff must be confirmed; order accordingly with costs.

ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, ESQ., OFFICIATING JUDGE.

THE 6TH MARCH 1849.

No. 141.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 9th March 1848.

Soobudra Debeea, (Defendant,) Appellant,

versus

Damooda Bhuttacharj, (Plaintiff,) Respondent.

THIS is an action to recover a debt of rupees 98, principal and interest, on a bond bearing date the 29th Aughun 1245.

According to the bond, the money was borrowed by defendant to defray the expenses of her husband's mother's shrāād, and was to be repaid in the month of Maugh 1246 B. S.

The defendant denies the claim altogether, and pleads, first, that her mother-in-law died in Poos 1247 B. S.; second, that if the claim is valid the plaintiff can substantiate it by his khattas; and lastly, that plaintiff has filed this suit at the instigation of her husband's relations, who wish to get possession of her husband's property.

The moonsiff observes that defendant fails to prove the enmity she represents as existing; and that, on the other hand, two of plaintiff's witnesses certify the bond as having been executed, and to the loan having been made in their presence, and that the plaintiff himself declares the claim to be a just one.

In appeal it is urged by defendant that plaintiff never declared, as stated by the moonsiff, to the truth of his claim; that he never appeared in person before the moonsiff; that officer merely deputed a mohurrir to take plaintiff's deposition, which deposition was never given by plaintiff at the date stated, as he, plaintiff, was then absent from home.

On a review of the proceedings it appears that the moonsiff has not inquired minutely into the grounds of plaintiff's claim; had he done so, he would, I think, have arrived at a different conclusion to that which he has formed. In the first place, though the stampt paper on which the bond is drafted is of long date, viz. 1245, the writing is undoubtedly recent, as the creases of the paper are written over. The witnesses, who certify the bond, can neither read nor write; and their being able to identify the bond, after the lapse of so many years, as having been executed in their presence, is beyond

probability. Their testimony, moreover, is at variance with the bond, which specifies that the loan was made in Company's rupees; the witnesses swear it was in Sicca rupees. And again, they say they attested the bond at one and the same time, which is not likely, as the two signatures have evidently been written at different periods and with different ink. It would also appear that the moonsiff never summoned the plaintiff before him to depose to the truth of his claim, agreeably with which defendant expressed herself ready to abide, but was satisfied with a deposition (not on oath) said to be that of plaintiff, taken by one of the inferior officers of his court deputed for the purpose; and finally, the moonsiff has failed to notice that the loan was to have been repaid, and the bond redeemed in one year; and that plaintiff took no steps to recover for a period of eight years. For these reasons, I admit the appeal, and remand the case to the moonsiff, who will restore it to his file, and proceed to re-investigate it with reference to the foregoing remarks. The cost of stamp incurred in preferring this appeal, to be refunded in the usual manner.

THE 6TH MARCH 1849.

No. 145.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 14th March 1848.

Muddun Mohun Adhikaree, (Plaintiff,) Appellant,

versus

Narain Dutt Mudduck and others, (Defendants,) Respondents.

THIS is an action to recover value, with interest, of sugar supplied to defendants.

The plaintiff states that defendants bought from him on the 5th Bysack 1254 B. S., 1 maup, 3 sullees, and 11 seers (183 seers) of sugar, the value of which was rupees 21; 8 rupees were paid, and the balance with interest plaintiff now sues for.

The defendant, Narain Dutt, denies having had any transactions with plaintiff, such as he describes, and pleads that a quarrel has long existed between the plaintiff and himself. The other defendants allow the suit to go by default. The moonsiff, in failure of plaintiff producing his witnesses, which is the only evidence offered by plaintiff, dismisses the case.

The plaintiff admits that he failed in two attempts to point out witnesses, but pleads that the moonsiff was not warranted in dismissing his suit to the prejudice of his right to institute a suit *de novo.* It appears from the proceedings that six weeks had not elapsed from the date of the nazir's return, stating plaintiff could not point out his witnesses, and that of the moonsiff's order dismissing the case. The latter was consequently illegal, and, supposing

six weeks had elapsed, he should have struck the suit off his file and not dismissed it.

The appeal is decreed, and the case remanded to the moonsiff, with a view to his proceeding in the manner indicated. The cost of stamp used in preferring this appeal, to be refunded in the usual manner.

THE 12TH MARCH 1849.

No. 157.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 24th March 1848.

Kisto Chunder Gossein, (Defendant,) Appellant,

versus

Ramtunnoo Chuckerbuttee and others, (Plaintiffs,) Respondents.

THIS is an action for possession of 13 cottahs of land, with mesne profits, laid at rupees 35.

The plaintiff states he purchased the aforesaid land from Issur Chunder Gossein, and a deed of unconditional sale was executed in his favor, on the 24th Bhadoon 1253 B. S.: on his endeavouring to take possession, he was prevented by the defendants, and now seeks his remedy.

The defendant (appellant,) Kisto Chunder Gossein, replies that the property in dispute belongs to him exclusively, and was purchased by him at a sale, and denies that his brother, Issur Gossein, has any lien on it.

The defendant Issur replies that he and his brother enjoyed the said property in joint tenancy; that on the 9th Bhadoon 1253 it was divided; and that the portion in dispute fell to his share; and on the 24th of the same month and year he sold it to plaintiff. The defendant Khetoo Mudduck replies that he is the tenant of the defendant Kisto, who granted him a lease of the land.

The moonsiff considers the pleas of the defendant Kisto Chunder Gossein good, as regards the purchase of the land having been made by him under a fictitious name; but he considers it proved, by the witnesses of Issur Chunder Gossein, that the property belonged to, and was held in joint tenancy by, Kisto and his brothers, and was subsequently divided among them; that the land in dispute, viz. 13 cottahs, fell to Issur's share; and that therefore he had power to alienate it; and consequently, that the deed of sale is good and valid.

The defendant Issur, in his reply, states that the property was divided by arbitration; and he quotes the names of the arbitrators; and some of the witnesses also say they were of the number: but the moonsiff has omitted to enquire who elected them, whether the usual preliminaries were gone through previous to their election, and

to call for proofs that they were *bonâ fide* elected, and the result of their proceedings. Again, in a dispute like the present, it was incumbent on the moonsiff to depute an ameen to the spot to ascertain how the land had been divided, and what party was in possession of each share. Without such particulars, it is impossible to determine the validity of plaintiff's claim. The moonsiff's investigation at present is incomplete. His decision is therefore set aside, and the appeal admitted, and the case remanded to him, with the view to his proceeding in the manner above indicated before passing final orders. The cost of stamp incurred in preferring this appeal, to be refunded in the usual manner.

THE 13TH MARCH 1849.

No. 107.

Appeal from a decision of the Moonsiff of Culna, Sheik Khoda Buksh, dated 16th March 1848.

Sheik Goolam Mustofa, (Plaintiff,) Appellant,

versus

Sheeboo Jullianee and others, (Defendants,) Respondents.

THIS is an action to recover rupees 20-8 annas, due on a deed of instalment, bearing date 24th Asar 1245 B. S.

The defendants, according to khattas, or books of account, were debtors to plaintiff to the extent stated, and the deed of instalment was made in liquidation of the same. The defendant Sheeboo Jullianee does not appear. The defendant Kaseenath denies all knowledge of the transaction, pleads minority at the time the kistbundee is represented to have been written.

The moonsiff required the personal attendance of the defendant Kaseenath, and expresses his opinion that he, Kaseenath, is not at present more than 21 or 22 years of age; and consequently in 1245 B. S., when the kistbundee is dated, must have been a mere child, and incompetent to engage in such transactions as stated by plaintiff. For this and other reasons, which he assigns he dismisses the case.

The plaintiff in his rejoinder never attempts to answer defendant's objection, but carefully avoids all notice of the question of minority; from which it may be inferred he could not refute it. The basis of the kistbundee, plaintiff admits, is the khatta, wherein the defendants appear as debtors; but the khatta is not forthcoming, though plaintiff was called on to produce it; and the proof of the existence of defendants' debt is therefore wanting. The names of the attesting witnesses, who were examined, have been added, no doubt, since the kistbundee was executed; the ink is perfectly fresh and of a totally different color to that in which the body of the document and the names of other witnesses are written. One of the three witnesses deposing, can neither read nor write, and his testimony is

not, therefore, worthy of credit. I concur in the finding of the lower court, and affirm its decision, and dismiss the appeal with costs.

THE 13TH MARCH 1849.

No. 160.

Appeal from a decision of the Moonsiff of Indoss, Naziroodleen Mahomed, dated 28th March 1848.

Sheik Bechoo, (Defendant,) Appellant,

versus

Sree Motea Ahooleea Bewa, (Plaintiff,) Respondent.

THIS is a suit for a debt on a promissory note, principal and interest, rupees 45, bearing date the 17th of Assin 1247 B. S.

The defendant admits having borrowed the money, but pleads that he repaid it in the month of Phalgoon following, and that the promissory note was restored to him.

The moonsiff rejects the defendant's plea and the evidence in support of it. He observes that the promissory note, filed by defendant, is evidently a forgery; that the testimony of the witnesses who certify it, and who depose to defendant's repaying the money to plaintiff, is wholly unworthy of credit, as being replete with contradictions and improbabilities. On the other hand, the promissory note, filed by plaintiff, bears all the appearance of being genuine, is duly certified by witnesses who can read and write; and considering the claim valid, decrees for plaintiff.

On a review of the proceedings, I see no reason to differ in opinion with the lower court. The appeal is accordingly dismissed, and its decision affirmed, without serving a notice on the respondent.

THE 15TH MARCH 1849.

No. 177.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 8th April 1848.

Nubkoomar Rae, (Plaintiff,) Appellant,

versus

Shama Bagdee and others, (Defendants,) Respondents.

THIS is a suit to recover a bond debt, principal and interest, rupees 30. The bond bears date the 29th Sawun 1252, to be redeemed in the month of Poos in the same year. The defendants

made no reply in the first instance, but entered a petition, after plaintiff's exhibits had been filed, denying the claim.

The moonsiff observes that the witnesses attesting the bond, swear the money was not given to defendants in their presence; the latter only admitted having received it; that such testimony is opposed to the tenor of the promissory note, which implies that the payment of the money and the execution of the bond were simultaneous. Again, that the plaintiff is a mahajun, and in the habit of granting loans; and that if there had been a *bonâ fide* transaction between the parties, plaintiff's khattas would substantiate it; the plaintiff, however, fails to produce any accounts whatever, though eight months have elapsed since he was required to file them. The moonsiff further states that the defendants prove an *alibi* at the date affixed to the promissory note, and gives a verdict for the defendant.

I agree with him, because the plaintiff fails entirely to prove his claim. The moonsiff, however, had no authority to enter on defendants' pleas. He should have proceeded to investigate *exparte*, and decide as if the defendant had allowed the suit to go by default. The petition of defendants, to which the moonsiff adverts, was not presented till after plaintiff's exhibits had been filed, and his (moonsiff's) recognising it as a reply, was consequently illegal. The appeal is dismissed, and the decision of the lower court affirmed, without serving a notice on the respondents.

THE 15TH MARCH 1849.

No. 184.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 19th April 1848.

Harree Beebee, after her demise, Mudoosoodun Baboo, (Defendant,) Appellant,

versus

Sreeram Hajra, (Plaintiff,) Respondent.

THE plaintiff sues to recover a bond debt with interest, rupees 97, bond bearing date 25th Bhadoon 1246 B. S. The defendant denies the claim, and pleads that enmity has existed for some time between plaintiff and himself. The moonsiff is of opinion, from the evidence of witnesses and the khattas, in which Harree Beebee appears as a debtor, that the tumusook is valid, more particularly as the defendant fails to establish his reasons why it is a forgery. On a review of the proceedings, I see no reason to differ with the lower court. Its decision is affirmed, and the appeal dismissed, without serving a notice on the respondent.

THE 17TH MARCH 1849.

No. 148.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churn Shome, dated 31*st March* 1848.

Gudadhur Bundopadia, (Plaintiff,) Appellant,

versus

Mudoosooden Paul and others, (Defendants,) Respondents.

THE plaintiff sues for a balance of rent accruing for the year 1254, principal and interest, rupees 15-4.

The defendant admits his liability for rent, but pleads, first, that the amount annually is rupees 20-13-3, not rupees 21-13-3; and secondly, that in the year 1254 B. S. he paid rupees 17 to the gomastah of the receiver of the Supreme Court, acting on behalf of the minors, Juddoonath Mitter and others; and lastly, that the plaintiff was never in possession as ijardar in the year specified.

The receiver, on behalf of the minors, admits having collected rupees 17, in 1254 B. S., from the aforesaid defendant.

The moonsiff overrules the plea of defendant as to the amount jumma, which is proved to be rupees 21-13-3, as stated by the plaintiff. He is of opinion that plaintiff has no right to rent for the whole year sued for, as it is clear, with reference to another suit decided in his court, (No. 8,) that plaintiff's possession only extended to the month of Phalgoon 1254 B. S. The defendants, however, prove, to the satisfaction of the lower court, that they have paid rupees 17, of the sum sued for, to the receiver's agents; and as it was notorious that possession was a disputed point between the plaintiff's principal, Hurro Monee, and the minor's manager, the moonsiff rules that plaintiff must recover from the manager the moneys he collected; and that the other defendants cannot in equity be made liable for the rupees 17, but only such portion of rent as may remain after deducting that sum from the amount jumma for which defendants are liable, and decrees accordingly.

In appeal, the plaintiff maintains that defendants cannot be relieved of their responsibilities to him, because they paid their rent to a third party who had no title to it. The tenure on which lot Jyepore is held by the parties in this suit is a peculiar one. It seems, according to the facts recorded in case No. 81, appeal decided in this court on the 28th August 1848, that the estate is dedicated to the use of an idol, Muddun Mohunjee. The family of the deceased, Gokel Chunder, to whom the property belonged, succeeded to it on the condition of performing the service of the said idol. Each member was to perform in turn, and to enjoy, during his tenure of office, the perquisites arising from the estate. The period when such tenure is to commence and when to terminate has been a source of constant dispute amongst all the pro-

prietors, each and all of whom collect the rents or endeavour to do so. The ryuts cannot draw the distinction between the several claimants, whose interests are joint and undivided; consequently, if they pay the rents to one partner in the estate and receive a release, they must be exempted from second payments; and the parties, who deem themselves aggrieved, must seek their remedy against their co-partner. In the present instance the defendants must receive credit for what they have paid, and be made liable for the balance due in 1254 B. S. There is nothing on record to show that plaintiff's possession ceased in Phalgoon 1254 B. S. The case quoted by the moonsiff contains no authority defining the limit of plaintiff's tenure as to time or extent. If therefore his claim be valid to Phalgoon 1254 B. S., it is equally so to the close of the year; but it appears from the plaint, that plaintiff admits having received rupees 8-4, in liquidation, so that, admitting defendant's plea of payment of rupees 17 to be good, as the moonsiff does, they, defendants, have already paid in excess of the amount jumma for which they are liable. The appeal is accordingly decreed, and the case remanded to the moonsiff, who will review his judgment and pass orders with reference to the foregoing remarks. The cost of stamp to be refunded in the usual manner.

THE 19TH MARCH 1849.

No. 192.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 27th April 1848.

Sreenath Partock, (third party,) Appellant,

versus

Goluck Chunder Dhur, (Plaintiff,) and Hurreepersaud Doss, (Defendant,) Respondents.

THIS is an action for rent, on account of the year 1254 B. S., to the month of Bhadoon; rupees 11-2.

The defendant pleads that he sold his right in his lease to the third party, appellant, and since that period his liabilities ceased.

The third party confirms defendant's statement, but adds that the plaintiff, talookdar, refuses to record his name in his account.

The moonsiff observes that the accounts, certified by the gomastah and witnesses, show the defendant to be a defaulter to the extent sued for; and that it is also proved, defendant was in possession in 1254 B. S., and decrees for plaintiff.

From this award the third party appeals, and pleads that he holds the lease in virtue of a deed of transfer executed in his favor by defendant, but that the talookdar refuses to recognise him as defendant's successor. The moonsiff's decision appears correct. The appellant has his remedy against the talookdar,

if he thinks proper to seek it. The appeal is dismissed, and the decision of the lower court affirmed, without serving a notice on respondent.

THE 19TH MARCH 1849.

No. 193.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 17*th April* 1848.

Hullodhur Singh, (Plaintiff,) Appellant,

versus

Ramsoondur Ghosaul and others, (Defendants,) Respondents.

THIS is an action to recover rent, laid at rupees 213-13-9.

The plaintiff sued to resume and assess 45 biggahs of land, held by defendants on an invalid tenure, and obtained a decree in the collector's court, on 3rd April 1846. The usual notice was served on defendants to appear and make arrangements for the payment of their rents: in failure thereof, the present suit has been instituted.

The defendant Ramsoondur Ghosaul and others made no reply, but entered a petition after plaintiff's exhibits had been filed and all preliminary inquiries had been completed. In it they pleaded that the assessment allotted was excessive. Sundry third parties lay claim to plots of ground included in the measurement of the ameen, and assessed as part of the property resumed.

The moonsiff remarks that, according to the ameen's measurement, the total area of land resumed as pointed out by the plaintiff, comprises biggahs 51-9½ of land. He overrules all the claims of third parties, except those for biggahs, 8-2-15½ which he deems valid, because those preferring them were no parties to the resumption suit. The moonsiff takes for granted the rates assumed by the ameen to be correct, and gives a verdict for plaintiff for rupees 128-10-3-1.

The plaintiff (appellant) maintains that he is entitled to the whole of the land decreed, viz., biggahs 51-9½; and that the defendants having failed to file any reply in the court of first instance, the moonsiff was not justified in noticing the points mooted in their petition. It appears from a review of the proceedings that the moonsiff's investigation is incomplete. The ameen, in conducting the measurement of the land resumed, should have been guided by the decree, wherein the limits of the lands comprising the resumption are defined, and not by the plaintiff's instructions. In disposing of the several claims the moonsiff should likewise have been guided by the decree. In the first instance he quotes, wherein he releases biggahs 8-2-15½ of land, he appears to have admitted the claim on very insufficient grounds, merely because the claimants were no party to the resumption suit: he called for no evidence, and made no inquiry as to possession, so that he (the moon-

siff) virtually set aside the resumption decree, and declared the said land exempt from assessment, solely upon the declaration of interested parties. If the land tallies with that recorded in the decree, a point that should have been ascertained, he is not justified in releasing unless it be satisfactorily proved that it is in possession of those who were in no way concerned in the resumption suit. Again, the moonsiff was not justified in assuming that the rates fixed by the ameen were correct. It would seem that the latter rejected altogether the testimony of the arbitrators of both parties, as to the rates, as unworthy of credit, and fixed others, but upon what data, except that of surmise, is not shewn; he does not appear to have taken the evidence of disinterested parties on the subject. Lastly, the defendants having failed to give any answer before plaintiff's exhibits were filed, the moonsiff could not legally notice the points mooted in the petition presented at a subsequent period, and he should have disposed of the case as if it had been *exparte*. The appeal is decreed, and the decision of the moonsiff set aside, and the case remanded to that officer, who will restore it to his file, and proceed to investigate *de novo*, with reference to the foregoing remarks. The cost of stamp to be refunded in the usual manner.

THE 19TH MARCH 1849.

No. 197.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 17*th April* 1848.

Ram Soonder Ghosaul and others, (Defendants,) Appellants,

versus

Hullodhur Singh, (Plaintiff,) Respondent.

THIS appeal is preferred from a decision passed by the moonsiff, in the case adverted to, in appeal No. 193. For reasons therein assigned, the appeal is decreed, and the case remanded to the moonsiff for further inquiry.

The value of stamp used in preferring this appeal to be refunded.

THE 19TH MARCH 1849.

No. 195.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 17*th April* 1848.

Gopaul Chunder Roy, (Defendant,) Appellant,

versus

Pubbun Chunder Roy, (Plaintiff,) Respondent.

THE plaintiff sues to recover certain moneys, rupees 23-5-5, deposited in court to stay an execution of decree sale. Some real property

belonging to plaintiff, was attached in execution of decree sale. Some real property belonging to plaintiff, was attached in execution of decree of one Kartick Chunder Roy *versus* the defendant, Gopaul, when the plaintiff preferred a claim but the case was struck off on default, and the sale ordered to be proceeded with. To stay it the plaintiff deposited the amount decree in court, and now sues to recover it from Gopaul.

The defendant Kartick Chunder replies that plaintiff has his remedy with the defendant Gopaul.

The defendant Gopaul Chunder Roy pleads that the money, deposited by the plaintiff, was his, and given to him by defendant for the purpose to which it was applied.

The defendant Rampersaud confirms plaintiff's statement.

The moonsiff rejects Gopaul Chunder Roy's story, as altogether unworthy of belief. The records in the execution of decree suit, No. 40, prove the money to have been deposited by Pubbun Chunder and Rampersaud; and the defendant Gopaul's statement, that the deposit was made *benamee* in his behalf, is contradicted in his reply in the suit of the decreedar, Bistoo Ram Roy, wherein he distinctly avows that the property, to save which plaintiff deposited the money, belonged to Pubbun Roy. I see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on respondent.

THE 20TH MARCH 1849.

No. 200.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 25th April 1848.

Marpof Mullick, (Plaintiff,) Appellant,

versus

Sona Oollah, (Defendant,) and Woojul Mahomed, (third party,) Respondents.

PLAINTIFF sues to recover a debt of rupees 30, on deed of mortgage bearing date 3rd Asar 1252 B. S. The defendant confesses judgment, and adds that the property mortgaged will not be alienated so long as the debt remains unliquidated.

The third party pleads that the defendant has colluded with plaintiff to bring this suit, to defeat the execution of a decree sued out by claimant against the defendant.

The moonsiff discredits the evidence of the witnesses attesting the mortgage deed, as it is inconsistent and contradictory; and from the fact of this suit having been brought after the application for suing out the decree had been made by third party; he (moonsiff) strongly suspects the mortgage to be fictitious, and dismisses the case. In this decision I concur. The stampt paper, on which the deed is

written, is dated 1252; but the draft, from the appearance of the ink, which is fresh, and from the circumstance of the creases of the paper being written over, is evidently recent.

The terms of the mortgage are, that the money was to be repaid in the month of Poos following the month of Asar 1252, when the deed is said to have been executed; but the records shew plaintiff took no steps to recover his money for two years, and not till after third party had obtained a decree against defendant, and had applied to put it into execution. The appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 20TH MARCH 1849.

No. 201.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 19th April 1848.

Sheik Molong and others, (Defendants,) Appellants,

versus

Woojul Mahomed, (Plaintiff,) Respondent.

THIS is an action to recover rupees 30-15-5, principal and interest, on a deed of instalment, bearing date 2nd Bhadoon 1239. The plaintiff states that he carried on the business of a mahajun in partnership with, and in the name of, his elder brother, Chowdhree Sheik; that when the partnership was dissolved and the property divided, the kistbundee in question fell to his (plaintiff's) share.

The defendants deny the kistbundee, and plead that the suit has originated in enmity.

The moonsiff deems the kistbundee valid, and decrees for plaintiff accordingly. The moonsiff's inquiry is incomplete. He grounds his decision chiefly on a hissanameh filed in some execution of decree suit; but this hissanameh was not before the court in evidence; nor does the moonsiff explain of what nature it is, or when executed. Again, it has escaped his notice that the kistbundee bears the signatures of the father, the son, and of Jampoo Beebee, the wife of the former and mother of the latter, a circumstance, in my opinion, that throws discredit on the deed, as, if the head of the family signed it, the signatures of the wife and the son were superfluous. The money was lent to defendants in their course of business as mahajuns; if, therefore, the deed of instalment be a *bonâ fide* document, it will be supported by the plaintiff's khattas, which he should be called on to produce. The decision of the moonsiff is accordingly reversed, and the case remanded to him with a view to his prosecuting a further inquiry with reference to the foregoing remarks. The cost of stamp used in preferring this appeal, to be refunded in the usual manner.

THE 20TH MARCH 1849.

No. 203.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd April 1848.

Beer Chunder Gossein and others, (third party,) Appellants,

versus

Nund Koomar Dass, (Plaintiff,) and Kaseenath Sein and others, (Defendants,) Respondents.

THIS is a suit for balance of rent, 2-2-2-2 rupees.

The plaintiff states that the defendants are tenants of a dwelling house and lands situated in a lakhiraj property, belonging formerly to one Roop Chand Gossein, who transferred it to plaintiff by a deed of sale.

The defendants are defaulters for the year 1254 B. S., and, on failure of payment, plaintiff now sues. The defendants deny they are tenants of plaintiff, and plead that the transfer spoken of by plaintiff never took place, that they are responsible to Roop Chand Gossein's heirs, Beer Chand aud Ram Chand, for the rent, which is rupees 2 annually, which they have paid and hold vouchers for the same.

Beer Chunder Gossein and Ram Chunder Gossein (third party) dispute the right of plaintiff to the land, and deny that their father ever sold under the transfer stated by plaintiff.

The moonsiff gives a verdict for the plaintiff; but he appears to have grounded his decision on false premises. He has no right to assume that plaintiff's kuballa is a true and valid deed. That is a disputed point between plaintiff and the third party, the heirs of Roop Chand Gossein, and until it is settled by a reference to the courts, the question of rent must remain in abeyance. The present suit is merely one for rent and not one of right of possession, which the moonsiff was not qualified to enter on. The appeal is accordingly decreed, the decision reversed, and the case remanded to the moonsiff with instructions to proceed with reference to the foregoing remarks. The cost of stamp to be refunded.

THE 20TH MARCH 1849.

No. 204.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd April 1848.

Kaseenath Sein, (Defendant,) Appellant,

versus

Nundkoomar Doss, (Plaintiff,) Respondent.

THIS appeal is preferred from a decision passed by the moonsiff in case No. 203. For the reasons therein assigned, the appeal is decreed,

and the moonsiff's decision reversed, and the case remanded for further inquiry. The cost of stamp to be refunded.

THE 26TH MARCH 1849.

No. 202.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 22nd April 1848.

Beer Chunder Gossein, (Plaintiff,) Appellant,

versus

Kaseenath Sein and others, (Defendants,) and Nund Koomar Dass, (third party,) Respondents.

THE plaintiff sues to recover rent of a dwelling-house, from 1251 to 1254 B. S. The defendants confess judgment.

The moonsiff dimisses the case, grounding his decision on the deed of sale filed by the third party, which he assumes to be valid.

The appellant pleads that the defendants having confessed judgment, he is entitled to a verdict in his favor. This is overruled, as it is clear, for reasons assigned in case No. 203, that the right of possession is a disputed point, and a decree cannot be given without prejudicing the claims of the third party. As has already been observed, the question of rent must await the result of a decision as to the right of possession. The appeal is decreed, and the case remanded to the moonsiff, who will proceed in the manner indicated in case No. 203. The cost of stamp to be refunded.

THE 26TH MARCH 1849.

No. 206.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 20th April 1848.

Sookee Bewa and others, (Plaintiffs,) Appellants,

versus

Gopaul Chunder Holdar and others, (Defendants,) Respondents.

THIS is an action to recover an excess payment made to stay a process of attachment; laid at rupees 25-1-4.

The plaintiffs held a lease from defendants with an annual rental of Sicca rupees 13-7-11-1, to Asin of 1253 B. S. Plaintiffs paid Company's rupees 6, in liquidation. The defendants distrained under Regulation V. of 1812, for Company's rupees 14-5; and the plaintiffs, to prevent the attachment being sued out, deposited the amount with interest. The defendants thus realised in 1253 B. S., rupees 22-3, or 7-13-1 in excess of the amount for which plaintiffs are liable.

The defendant pleads that the lease annually is Company's rupees 17-2-3, at which rate he has collected since he entered on possession

in 1251 B. S. He admits having received from plaintiffs rupees 6 in liquidation for 1253 B. S., and the balance he recovered by distress. He adds, however, that there is still a balance owing for 1252 B. S., of rupees 4-14-13, which he will sue for separately.

The moonsiff rejects plaintiffs' evidence of the rate at which they hold their lease, and, assuming the defendant's jumma, as exhibited in the accounts he files, to be correct, for reasons he assigns, gives a verdict for plaintiff for Company's rupees 3-14-16, inclusive of penalty.

From the defendant's reply the process of distress seems to have been illegally levied. He states that when distraint was levied there was, *besides* the amount balance shown in the jumma-wasil-bakee, an arrear of rupees 4-14-13, on account of 1252 B. S. It is clear, I think, that the jumma-wasil-bakee, on which a process for distress can be summarily served, under Regulation V. of 1812, must contain the whole demand on the tenant, *vide* Section 13 of the law quoted. The summary process is not applicable in cases where rent has been due for more than one year, that is 12 months, *vide* Section 4, Regulation II. of 1805. The defendant's jumma-wasil-bakee, according to which distress was levied, did not, by defendant's showing, include the *whole* demand, and the attachment and sale of plaintiff's crops were consequently illegal. The moonsiff has overlooked altogether this point in his inquiry. I differ also with him in the conclusions he has drawn as to the accounts filed by plaintiffs, which he (the moonsiff) rejects as unworthy of credit. If he doubted their authenticity, he should have taken measures to compare them with the originals, and to have ascertained whether those originals had been pronounced authentic by the court in which they were filed. Without such inquiry the moonsiff had no grounds for rejecting the copies. I therefore admit the appeal, and remand the case for further inquiry on the several points above stated. The cost of stamp to be refunded.

THE 27TH MARCH 1849.

No. 212.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 28th April 1848.

Kaleepersaud Partock, (Defendant,) Appellant,

versus

Burkut Mundul, (Plaintiff,) Respondent.

THE plaintiff sues to set aside a sale made in execution of a decree. He states that defendant sued out a decree against his sons, and in liquidation of the claims against them, certain lands belonging to him were sold. The defendant pleads, in the first place, that the suit has been improperly valued in violation of the law; and denies

in the second, that the plaintiff has any interest in the property sold in satisfaction of his (defendant's) decree.

The moonsiff gives a verdict for the plaintiff. He has, however, neither noticed, nor disposed of, the defendant's plea as to the valuation of the suit. From the records it appears the suit has not been valued agreeably with any of the provisions of Clause 8, Schedule B, of Regulation X. of 1829, or Construction No. 702, dated 6th July 1832; and the plaintiff should have been nonsuited on the preliminary inquiry. The appeal is accordingly decreed, and the case remanded to the moonsiff with a view to his adopting the course indicated. The cost of stamp to be refunded.

THE 27TH MARCH 1849.

No. 220.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 8th May 1848.

Kartick Roodur, (Plaintiff,) Appellant,

versus

Benode Chunder Paul and others, (Defendants,) Respondents.

THIS is an action to recover certain sums, paid in behalf of defendants, as security on deeds of instalments executed by the ancestor of the latter. The plaintiff states, when Khetur Mohun Paul sued out a decree against one Seeboo Ghose, he paid, in behalf and as security for the said Seeboo, rupees 36, on account of the decree; and rupees 26 on a separate account; altogether rupees 62.

The defendants, Benode Chunder and Khetur Mohun Paul, admit having received at the time of the sale, rupees 36, but deny all other payments. The other defendants, the heirs of Seeboo Ghose, allow the suit to go by default.

The moonsiff gives a verdict for the defendants Benode and Khetur Mohun.

Against this decision an appeal is preferred by plaintiff, on the ground of the moonsiff's refusing to examine his (plaintiff's) witnesses. The moonsiff, from the records, appears to have disposed of this case without waiting the appearance of plaintiff's witnesses, (who had expressed their readiness to attend within the prescribed period on the back of the subpœna,) on the grounds of their being under the influence of the plaintiff; an opinion quite unwarranted by any thing in the proceedings. The moonsiff likewise, in an interlocutory order, dated 6th May, gives the plaintiff two days to produce his witnesses, but before that period expires he finally disposes of the case, viz. on the 8th, without in any way accounting for such an unusual proceeding. The appeal is admitted, and the case remanded to the moonsiff, who will summon and examine the plaintiff's witnesses, and then proceed to pass orders. The cost of stamp to be refunded.

THE 29TH MARCH 1849.

No. 221.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 3rd May 1848.

Tofele Khan, (third party,) Appellant,

versus

Kartick Chunder Roy, (Plaintiff,) and Nubkisto Sircar and others, (Defendants,) Respondents.

THIS is an action for a bond debt, laid at rupees 63-9-7.

The plaintiff states that Nubkisto and Takore Sircar borrowed, on the 3rd Bysack 1251 B. S., rupees 45, mortgaging as security biggahs 1-5 of land, trees, tanks, &c. In failure of repayment, the plaintiff sues.

The defendant Nubkisto Sircar confesses judgment in regard to the loan and mortgage deed, but pleads repayment of a portion of the debt.

The defendant Byrob Dasseea, widow of the deceased, Takore Sircar, pleads ignorance of the transaction, and that the defendant Nubkisto borrowed the money and executed the deed.

Tofele Khan, third party, appellant, urges that the property specified in the bond was transferred to him by Nubkisto Sircar on 3rd Asar 1254 B. S. by absolute sale, and that the present suit has been brought at Nubkisto's instigation, to prejudice his (third party's) title deed.

Ram Mohun Dey, third party, claims a right to 6 cottahs of the land, mortgaged in virtue of a deed of sale, executed in his favor by Nubkisto Sircar in 1248 B. S.

The moonsiff observes that the claims of the third parties will form subject of inquiry at a subsequent stage of the proceedings, when the decree is sued out. The moonsiff considers that the plaintiff is entitled to a verdict, he having established the validity of his bond, and defendants having failed to prove that any portion of the debt has been liquidated.

In appeal the third party, Tofele Khan, demurs that his interests will suffer by the moonsiff's decision, which declares the tumusook to be valid. Though the defendant Nubkisto confesses judgment, still the ground of plaintiff's claim is the tumusook; and it behoved the moonsiff to deliberate well whether that document was or was not executed in good faith. In the first place, it is to be observed that the signatures of Nubkisto Sircar and Takore Sircar are in the handwriting of the former, and no inquiry was made why Takore Sircar did not sign his name, nor whether he could write or not; secondly, the witnesses examined by the moonsiff, who are represented to have attested the bond, are of very low caste, and can neither read nor write, and, that they could certify a document, to which they only affixed a mark three years ago, is highly impro-

bable, but on this head the moonsiff's inquiry is incomplete. The witnesses were not shewn the deed nor asked to swear to the identity of it, as they ought to have been. I therefore decree the appeal, and remand the case that the moonsiff may supply the omission, and, after requiring the witnesses to swear to the document, he will dispose of the case, well considering the foregoing remarks.

THE 29TH MARCH 1849.

No. 222.

Appeal from a decision of the Moonsiff of Pothna, Seetee Kaunt Singh, dated 3*rd May* 1848.

Ram Mohun Dey, (third party,) Appellant,

versus

Kartick Chunder Roy, (Plaintiff,) and Nubkisto Sircar and others, (Defendants,) Respondents.

THIS is an appeal from a decision passed in case No. 221.

The particulars are already recorded, and, for reasons therein given, the appeal is decreed, and the case remanded to the moonsiff for further inquiry. The cost of stamp to be refunded.

THE 29TH MARCH 1849.

No. 229.

Appeal from a decision of the Moonsiff of Indoss, Naziroodeen Mahomed, dated 11*th May* 1848.

Syud Bundy Alee and others, (Plaintiffs,) Appellants,

versus

Meer Zuheeroodeen, (Defendant,) Respondent.

THIS is a suit to enhance the rate of certain lands in a lakhiraj estate. The plaintiffs (the zemindar and the farmer) represent that the defendant has held his lease hitherto at an annual rental of rupees 12-4½, which is almost a nominal rate; and they seek to raise it to the standard fixed by Mr. Caton in pergunnah Bishenpore, in which the aforesaid lakhiraj property is situated.

The defendant replies that his rate is not liable to increase until the expiration of the lease granted by the lakhirajdar to his farmer; and further pleads that 3 biggahs of the land, the rate of which plaintiffs sue to enhance, is his (defendant's) own lakhiraj.

The moonsiff is of opinion that, as defendant's ancestors held the lands at the same rate defendant at present pays, the latter is not liable to increase; that as defendant disputes plaintiffs' title to 3 biggahs, they are not open to assessment till plaintiffs have established it by a refer-

ence to the courts; that, according to the rate fixed by the deputy collector for other lakhiraj lands in the village, plaintiffs ought not to claim more than rupees 9-4-1-2 annually; and finally, that, as the village, in which the lakhiraj land lies, does not pertain to Bishenpore pergunnah, the rates of Mr. Caton are inapplicable; and on these grounds, he (the moonsiff) gives a verdict for the defendant.

The plaintiffs, in appeal, urge that the decision is at variance with the evidence in some instances, and unsupported by it in others. The moonsiff, in his decree, does not explain why the defendant is entitled to cultivate at a fixed rate. There is no proof on record of his right to such a privilege, and without it his plea cannot be admitted. It does not appear also upon what grounds the moonsiff recognises defendant's right to 3 biggahs as lakhiraj, his claim is not supported by a tittle of proof, and he does not appear to have called for any, as he should have done. His judgment must have been formed, therefore, on a mere surmise. The report of the ameen, deputed to the spot to ascertain the rates, represents them to be much in excess of those the defendant now pays, but the moonsiff attaches no credit to it. He assumes that the rates fixed by the deputy collector, for lands which, though situated in the same village, have no connexion whatever with those in dispute, are correct and should form the basis of plaintiff's claim. The correctness of these premises are, however, doubtful if not wrong, as the rates which defendant already pays are in excess of those fixed by the deputy collector. Lastly, from the records of the case there is every reason to believe that the lands in dispute do pertain to pergunnah Bishenpore: if there were a doubt on the subject, the moonsiff should have instituted an inquiry, which he has neglected. I therefore decree the appeal, and remand the case to the moonsiff with a view to his calling on defendant for his evidence to his claim of 3 biggahs, and in reference to the pergunnah in which they are situated, after which he will proceed to review his judgment, having regard to the foregoing remarks. The cost of stamp to be refunded.

ZILLAH WEST BURDWAN.

PRESENT: C. GARSTIN, ESQ., JUDGE.

THE 3RD MARCH 1849.

Case No. 277 of 1848.

Appeal from a decision of Moulvee Noorul Hossein, Moonsiff of Bishenpore, dated the 23rd June 1848.

Kishen Dey, (Defendant,) Appellant,

versus

Soodha Kishen, (Plaintiff,) Respondent.

Ambica Churn and others, Claimants.

To settle rent of land.

THIS suit is brought by the plaintiff, as the holder of mouzah Downkah, to have a proper rent fixed in certain lands tilled in it by the defendant, who has in all 17 beegahs 15 cottahs of various kinds. He adds that, on the 29th Jeit, he was served with the usual notice to come in and settle for them, but having paid no attention to this, he (plaintiff) now sues to have the rent fixed at rupees 87-8-8, which is the fair rate.

The defendant, in reply, states that plaintiff has so ill defined the lands, &c., that it is hard to reply to him, that the notice was not fairly and properly served, that he does not state clearly what portion of the lands are lakhiraj, &c., and what the reverse, and that he holds an old mocurruree jumma of rupees 24, which cannot now be enhanced.

Ambica Churn and Roknee put in a claim that the defendant tills 9-5 of their punchukee lakhiraj lands, which must be excluded from the plaintiff's claim.

Nund Kishore Rae also claims 2-18 as dewuttur belonging to him, and which too, he says, must be deducted.

After deputing an ameen to examine the lands, &c., on the 23rd June 1848 the moonsiff decides the case. He rejects all the claims to the lakhiraj as invalid, and also sets aside that made by defendant to pay no more than his old jumma of 24 rupees. He then deter-

mines that defendant holds in all 18 beegahs 15 cottahs, and on this, at certain rates mentioned in his proceeding, fixes a jumma of 62-2-1, decreeing the case for the plaintiff. Both the defendant and Ambica Churn appeal from this order, the former in this, and the latter in the following case.

Appellant states that both the claims put in are good and valid, and that these lands are not liable to assessment; that there is also a third person (Deeno Bundhoo,) who has also a claim to some of the lands as lakhiraj, but who, not having heard of the present suit, has not of course been able to come forward in it; that as he is a mere ryut of the lakhirajdars, the lands cannot be assessed in the present case; and that the moonsiff has no power to set aside these tenures and pronounce them invalid as he has done; that it is not clear from the moonsiff's orders upon which of the lands rent is fixed; and that the rates also are much too high, as the lands are poor and liable to injury from drought.

I consider the moonsiff's proceedings in this case as quite unsatisfactory, and indeed hardly understand upon what grounds he has come to the decision he has. The ameen's report makes the total of the land held by the defendant 23-12, and setting aside the claims of the lakhirajdars as he has done, it follows that the whole of this is liable to rent. He does not, however, take this as the quantity, but states it to be 18-5, which agrees neither with plaintiff's claim nor with the ameen's report. Besides this, he has on his own authority set aside the claim and sunnud put in by the claimants, which he clearly had no power to do. Under these circumstances, I have decreed the appeal, reversed his orders, and remanded the case to the moonsiff, who will in the first instance fairly ascertain what portion of the land held by the defendant, is liable to rent, and then proceed to fix such rates as may be fair and are paid for similar lands in that vicinity. The usual orders for the return of stamps.

THE 3RD MARCH 1849.

Case No. 52 of 1849.

Appeal from a decision of Moulvee Noorul Hossein, Moonsiff of Bishenpore, dated the 23rd June 1848.

Ambica Churn, (Claimant,) Appellant,

versus

Soodha Kishen and Kishen Day, (Defendants,) Respondents.

THIS appeal is made by the claimants, in case No. 277, and as its details, &c., are there given at length, it is needless to repeat them here. It has of course been remanded with it.

THE 5TH MARCH 1849.

Case No. 5 of 1847.

Appeal from a decision of Baboo Chunder Seekur Chowdhree, Principal Sudder Ameen, dated the 3rd July 1847.

Maharajah Mahtaub Chund Bahadoor, heir of Ranee Komul Koomaree, (Defendant,) Appellant,

versus

Ram Mohun Banerjea, (Plaintiff,) Respondent.

THIS suit is instituted by the plaintiff, as putnee talookdar of lot ghat Jyebellia, to obtain possession of some beegahs 2,000 of jungle land, as belonging to his talook and decreed as such to one of his predecessors, but now claimed as his lakhiraj property by Rajah Gopal Singh, and also to set aside and reverse certain proceedings held regarding them under the provisions of Act IV. of 1840.

Rajah Gopal Singh, defendant, in reply, denies the justice of the claim, and says that these lands are his lakhiraj dewutter property, that plaintiff does not properly define the limits of the lands in question, or state when or how he or his predecessor became possessed of them, that the suit is undervalued, and that the zemindar, Maharanee Komul Koomaree, should also be made a party in the suit. This being subsequently done, the maharanee also comes in as defendant, and replies that these lands do not belong to plaintiff, but are part and parcel of ghat Tribunk Jyepoor in her zemindaree, that the claim does not clearly specify the limits of the land in dispute, and is not borne out by the byenamah under which he holds the putnee, that in the Act IV. case above alluded to, she has put in ample proof of the lands being hers, and though they were in that case left with the defendant (Rajah Gopal Singh,) she intended to have brought a suit to have it set aside, but plaintiff has been beforehand with her, &c.

The plaintiff rejoins, denying both these statements, and repeating that neither of the defendants can prove them.

The principal sudder ameen, after making enquiries of the collector as to the rajah's right to hold these lands as lakhiraj, and, after deputing an ameen to survey them, on the 3rd July 1847 decides the case. He repeats the claims set forth by the various parties, and then remarks that the plaintiff has fully established his case, that the rajah has failed in shewing, either in his court or to the collector, (who by the way states that these lands belong to Government,) that the lands are lakhiraj, whilst plaintiff has filed a decree (No. 13 of the provincial court, subsequently upheld in the Sudder,) awarding them to one of his predecessors, that the ameen's enquiry and report are decisive and clear, as to plaintiff's right to the land. With regard to the maharanee he remarks that, although he has several times called on her to shew that these lands appertain to her

ghat Tribunk Jyepore, she has never done so, and though she quotes the evidence given in the Act IV. case as proving her claim, and puts in some orders obtained under Regulation VII., and states that she was no party to the suit, No. 13, still she has adduced nothing which can set aside plaintiff's claim founded on and backed by the above decree, which also has become final. He therefore decrees the case for the plaintiff, as detailed in his proceeding, with this *proviso*, however, that this order shall be no bar to any claim which may hereafter be made to the lands on the part of Government.

From this order both the defendants appeal, the maharajah (as heir of the ranee) in this and Rajah Gopal Singh in the following case. The former complains that the ameen's enquiry and report were made before he (or rather the ranee) was made a party to the suit, and that it is not a fair one, that plaintiff's witnesses are untrustworthy, and constantly give evidence for him, and that he has ample proof that these lands appertain to his ghat Tribunk Jyepore, that he was no party in suit No. 13, when plaintiff's decree was passed, and that the principal sudder ameen did not give him the time he asked for to put in further proofs, and that the orders he has under Regulation VII. apply to these lands and to no other, &c.

On going over the proceedings held in this case, it appears quite true that the appellant (or rather the maharanee) had not been made a party to it when the ameen was deputed to look at the lands, still no objection was then made on this score, whilst it is equally certain that ample opportunity was given him to file such proofs as he might have of the truth of his statement, &c. Notwithstanding this he has adduced nothing which can fairly establish his claim, and, on the whole, I quite concur with the principal sudder ameen in the view he has taken of it. Under these circumstances, and as I see no cause to interfere with the orders already passed, I have upheld them, dismissing the appeal, and holding appellant liable for costs.

THE 5TH MARCH 1849.

Case No. 8 of 1847.

Appeal from a decision of Baboo Chunder Seekhur Chowdhree, Principal Sudder Ameen, dated the 3rd February 1847.

Rajah Gopal Singh, (Defendant,) Appellant,

versus

Ram Mohun Banerjea, (Plaintiff,) Respondent,

THIS is a second and separate appeal made from the principal sudder ameen's orders, as detailed in the last case No. 5, and it is of

course needless to repeat them all again. The appellant claims the lands as dewutter, but he has, in my opinion, totally failed in establishing the claim; and, as under all the facts, I deem the orders already passed correct and just, I have confirmed them, and dismissed the appeal, making appellant liable for costs.

THE 6TH MARCH 1849.

Case No. 25 of 1846.

Appeal from a decision of Baboo Chunder Seekhur Chowdhree, Principal Sudder Ameen, dated the 2nd December 1846.

Kishenpersaud Hajra, (Plaintiff,) Appellant,

versus

Mudoo Soodun Rae and others, (Defendants,) Respondents.

THE plaintiff states, in this case, that in his village, of mouzah Nugah, there is a certain jumma formerly held by a man named Seerut Khetoo Deb, who, however, left the place, when it was given by the then talookdar to Manick Baree, who held and tilled it, and, upon the defendants cutting and carrying off a part of the crops, &c., instituted a suit against them in the moonsiff's court at Madhubgunge; that in this suit the defendants stated the land to be their lakhiraj property, adding that Khetoo had only tilled it as ryut for them, and when his rights were afterwards sold in execution of their decree, they also had purchased them; that the moonsiff nonsuited the case, but subsequently, after appeal and on a remand, decreed a part of the land in dispute to Manick, when both he and the defendants appealed it again, when the additional principal sudder ameen decreed it for defendant, exempting, however, his (plaintiff's) rights as talookdar; that in truth the land is mal, and has been admitted to be so by one of the defendants' partners, wherefore he now seeks to have defendants' claim to the lakhiraj set aside, and the land declared to be mal.

The defendants, in reply, declare the land in dispute, 3-16, to be their lakhiraj property, and say that they let it themselves to the above named Khetoo Deb, and on his falling into arrears brought a suit against him and obtained a decree, and, suing out execution of it, they had his rights in it sold, when one of them (Mudhoo) purchased them at the sale, and then obtained a claim to hold them both as ryut and malick; that the land was subsequently resumed by Government, when also they paid the collector rent, &c. for it; and when it was afterwards released by orders of the special commissioner, it was of course restored to them; that Manick Baree afterwards instituted the suit mentioned by plaintiff, describing the land, however, as 6-4 instead of 3-16, as it really is, but took nothing by having done so, as it has all along been found and allowed to be lakhiraj, and not mal as stated by the plaintiff.

The principal sudder ameen, after deputing an ameen to survey the land and making enquiries about it in the collectorate, on the 2nd December 1846 decides the case. He remarks that the plaintiff has, in his opinion, quite failed in proving his case. He rejects the ameen's report as unsatisfactory, and states that, from the enquiries he has made and the replies given by the deputy collector, it is quite certain that this very land was resumed, and subsequently released by the revenue authorities. He considers it fully proved that the land in dispute is the defendants' lakhiraj, and therefore dismisses the case.

The plaintiff appeals, repeating his former statement, and adding that the defendants' lakhiraj is distinct and separate from the land now claimed, which is mal, and that it has been admitted to be so by one of the partners, and that the additional principal sudder ameen's orders especially exempt his claim; that the neglect of his former talookdar to prosecute them can be no bar to his doing so, and that all the enquiries made shew that these lands are mal.

The sole point for consideration in this case is, are the lands in dispute part of those released by the revenue authorities, or are they, as stated by the plaintiff (appellant,) distinct and separate from them? On this point, I think the collector's kyfeut quite conclusive, as it sets forth that these are the very lands, and even mentions the very dags, &c., in which they stand in his papers. The plaintiff (appellant) appears to have brought this suit mainly on the grounds of the order passed by the additional principal sudder ameen, but this, I think, proves nothing for him, as it merely states that it should be no bar to any claim the talookdar may have. Under all the facts of the case, as I agree with the principal sudder ameen in the view he has taken of it, and see no cause to alter or modify his orders, I have upheld them, dismissing the appeal, and holding appellant liable for costs.

THE 7TH MARCH 1849.

Case No. 24 of 1846.

Appeal from a decision of Baboo Chunder Seekhur Chowdhree, Principal Sudder Ameen, dated the 12*th November* 1846.

Shiboo Persaud and others, (Defendants,) Appellants,

versus

Pershaud Chatterjea and others, heirs of Mudhoo Soodun, (Plaintiffs,) Respondents.

Rupees 450-8-5, possession of land.

THIS is a suit instituted by the heirs of a man, named Mudhoo Soodun, to obtain possession of 3 beegahs 11 cottahs of land sold to him by Adeet Banerjea, on the 25th Bysack 1248, for 75 rupees. They state that after the sale, they duly obtained possession, &c., when in Jeit 1250, defendants ousted their ryut, Gyaram, of 12 cot-

tahs of it, and, on his (the ryut's) bringing a suit against them under Act IV. of 1840, deprived them of all the rest also, that Mudhoo Soodun himself brought a suit for the recovery of it, but, dying, they (as his heirs) carried it on, but owing to its being improperly valued were nonsuited; therefore, as their claim is just, they now bring the present action, and seek to have the land restored to them.

Shiboo defendant, in reply, denies the sale altogether. He states that Adeet was his brother and owner of one-third of the property; but that it never was divided at all, but held in joint occupancy (ijmallee) up to the time of his death in 1249, when he (defendant,) and Sreedhur, the son of another brother, came in for the whole of it as his heirs; that in truth the present case has been got up by the above named Gyaram, and that had the kuballa (bill of sale) been valid, it would have been countersigned by them as heirs, and also have been registered, whereas it is in fact false and the whole claim unjust.

Sreedhur defendant replies to the same effect.

On the 12th November 1846 the principal sudder ameen decides the case. He remarks that, although the defendants call the land burmoottur and dewuttur, and say that it was ijmallee, they prove nothing which can vitiate the sale; that the plaintiffs' witnesses fully establish the fact of its having taken place, together with the other facts set forth by the plaintiffs, whilst there are discrepancies in the evidence of those for the defence, which, in short, he distrusts. He considers the case proved, and therefore gives a decree for plaintiffs.

Defendant appeals much as before, but adds that in the villages in which the land sold is situated, Adeet's share (granting the thing to be true) is but 3-9, and not 3-11, as set forth by the plaintiff, and that this alone proves the whole story false.

On looking over the proceedings held in this case, I observe, from the sunnud they have, that the whole quantity of land belonging to the defendants in these two villages is but 10-7, of which Adeet's share of course would be but 3-9, and not 3-11 as stated in the kuballa, and I think that it would be as well (before coming to a decision on the subject) to have some further enquiry made on this point, and also to ascertain, by local investigation, whether plaintiffs were (as they state) actually put in possession, and whether Adeet himself held the land he sold, separate from the rest of the property, and for how long a time, &c.

The defendants (appellants) say that all the land was ijmallee and undivided, and, if so, though Adeet might have sold his rights, he could hardly have alienated any particular portion of what he enjoyed, only in common, with his brothers.

As I think that further enquiry in the above points is requisite in order to come to a correct opinion as to the reality of the sale, I have decreed the appeal, and remanded the case for further enquiry with reference to the above remarks.

The usual order passed for the return of stamp.

THE 12TH MARCH 1849.

Case No. 226 of 1848.

Appeal from a decision of Baboo Mohun Loll Panday, Moonsiff of Burjorah, dated the 16*th February* 1848.

Mudoo Soodun Banerjea, (Plaintiff,) Appellant,

versus

Thacoor Doss Banerjea and others, (Defendants,) Respondents.

THIS suit is brought by the plaintiff to reverse the sale of 3-6 of land and to obtain compensation for injury done to the crops at the same time. He states that these lands formerly belonged to his father, and on his failing, a fresh settlement of them was authorized by the collector, when he (plaintiff) with the aid of some property obtained from his grandfather, got them settled with himself; that they were subsequently attached and sold as the property of his father in execution of a decree sued out against him, and though he (plaintiff) at the time opposed this and stated that they were his, his claim was rejected and the sale carried out, when they were purchased by the defendant, Thacoor Doss; that having no other remedy, he now sues to have the sale reversed and the lands restored together, with compensation for his loss, &c., laying his claim in all at 57-11-10.

Thacoor Doss, defendant, in reply, denies this statement, and says that these lands were really the property of plaintiff's father, and, being sold as such in execution of the decree, were purchased by him with certain other lakhiraj land, which, however, he has never yet obtained, and that it is to prevent his getting them that this suit is brought, that plaintiff got nothing from his grandfather, and is not his heir, that the sale is valid and must be upheld, and the story of loss of crops, &c. quite unfounded, as there was nothing on the ground but a little sugar-cane, &c.

Gunga Nurain talookdar also replies, corroborating plaintiff's claims.

Plaintiff rejoins as before, explaining that he does not pretend to be heir to his grandfather, but only to have been aided by him.

On the 16th February 1848 the moonsiff decides the case. He rejects the plaintiff's claim to the lands, and holds the story of the settlement made with him, untrue, and he remarks also that he (plaintiff) has not *clearly* made out the loss of the crops, which defendant says consisted only of a little sugar-cane. He therefore dismisses the case, making plaintiff liable for costs, and then, in opposition to this, awards him 25 rupees from defendant by way of compensation for his loss.

From this order both parties (as they well may) appeal,—plaintiff in this case and defendant in No. 190. The former repeats his story

of having with the aid of his grandfather got the lands settled with him, and he says that he has ample proof that at the time of the sale they were his and not his father's, that the talookdar himself admits the truth of his claim, that defendant has proved nothing, whilst the moonsiff has awarded him only 25 rupees, when further and local enquiry, &c. would have amply proved his case, and he winds up by complaining of the length of the moonsiff's roobakaree, &c.

The moonsiff has in this case passed a very lengthy order, and after all it appears to me to be a very bad one, and to have been very carelessly drawn up. He first of all dismisses the case and makes plaintiff liable for costs, and then, in the face of this, awards him 25 rupees compensation for the loss of some crops, which he has just stated he (plaintiff) has failed in showing to be his. The amount too he appears to me to have fixed solely by guess; at least I see nothing in the proceedings which prove this to have been the amount of damage done. In its present state I consider his order (which contradicts itself) a nullity, and until it be rectified can do nothing further in the case. Under these circumstances, I have returned the proceedings to the moonsiff for re-consideration and amendment, and at the same time have called upon him (separately) to explain the grounds upon which he has passed so inconsistent an order, and to be careful in future to condense his proceedings, instead of contenting himself with transcribing the whole of the pleadings, &c., as he has done in this case, into his decree.

The appeal is decreed, the moonsiff's orders reversed, and the case remanded for the reasons above given. The usual order passed for return of stamp.

THE 12TH MARCH 1849.

Case No. 190 of 1848.

Appeal from a decision of Baboo Mohun Lal Panday, Moonsiff of Burjorah, dated the 16th February 1848.

Thacoor Doss Banerjea, (Defendant,) Appellant,

versus

Mudoo Soodun Banerjea, (Plaintiff,) Respondent.

THIS is a second and separate appeal, made by defendant, from the moonsiff's orders, &c., as detailed in the last case, No. 226, and it is of course needless to say more about it here. For the reasons already given, it also has been remanded, and the same order passed for return of stamp.

THE 17TH MARCH 1849.

Case No. 2 of 1847.

Appeal from a decision of George Loch, Esq., Deputy Collector of Bancoorah, dated the 2nd July 1847.

Aluck Chunder Adhekarree, (Defendant,) Appellant,

versus

Shiboopersaud Banerjea, putnee talookdar, (Plaintiff,) Respondent.

Rupees 297, to have certain lands declared liable to rent.

PLAINTIFF states in this case that, in his village, mouzah Suleehun, defendant holds certain lands, for which he pays no rent on the plea of its being lakhiraj, but that as this is not really the case, and he is not entitled to them, he now sues to have them declared to be mal, &c., laying his claim as above stated.

Aluck Chunder and Madhub, defendants, in reply, state that the claim is unjust, and that their lands are lakhiraj, and have been held as such for very many years, and previous to the Company's amuldaree; that they have in mouzah Mudhum Suleehun 14-6 of lakhiraj land, originally obtained by their ancestor, Neel Mohun, through whom it has come to them, and that the lands now claimed are a part of this; that their sunnuds, &c. were destroyed by fire in 1205 B. S., but that they were mentioned in a taidaad No. 60,941, filed in 1209 B. S.; that it is well known that the lands are dewuttur, &c. and as such are not liable to rent.

On the 2nd July 1847, the deputy collector decrees the case for the plaintiff, remarking that the defendants have no proof whatever of their statement.

Defendant appeals, repeating his claim of the land being lakhiraj. He says that the land is in mouzah Mudhum Suleehun, and not in Suleehun, which, in fact, is quite another place, as is shown by the evidence of his witnesses, and this alone must vitiate the claim, that he has held it for years past, and that plaintiff has no proof whatever that rent was ever levied on these lands, which, as dewuttur, are clearly not liable, and that he has fully proved his case.

After full consideration of all the proceedings held in this case, I must say I see no cause to impugn the orders passed upon it, as the defendant has clearly no proof that the land is lakhiraj. Under these circumstances, I have dismissed the appeal, confirming the deputy collector's order, and holding appellant liable for costs.

THE 19TH MARCH 1849.

Case No. 1 of 1847.

Appeal from a decision of George Loch, Esq., Deputy Collector of Bancoorah, dated the 25th May 1847.

Kishenpershaud Hajrah, (Plaintiff,) Appellant,

versus

Raj Kishen Rae and others, (Defendants,) Respondents.

IN this case the plaintiff states that in mouzah Neegah, in his putnee talook, the defendants hold 13 beegahs of land, which they state to be lakhiraj, but which in reality being mal, he now seeks to have this plea set aside, and the lands in question declared liable to rent.

The defendants, in reply, deny the justice of the claim, and state the lands to be their dewuttur lakhiraj property: they state that the 13 beegahs claimed is part of 40-8, which they are entitled to, and of which they have ample proof in the shape of a taidaad (No. 55,439) in the collector's own office.

The plaintiff does not rejoin. And the deputy collector, after making enquiries in his office and satisfying himself that the defendants' claim is good, on the 25th May 1847 dismisses the case, declaring the land not free.

The plaintiff appeals. He repeats that the land is mal and enters at great length into the facts of the case, and complains that no time was given him to reply to defendant's statement, and that the enquiry is therefore incomplete.

On looking over the proceedings held in this case, it appears to me that they are irregular, inasmuch as the deputy collector has neglected to give the plaintiff (appellant) an opportunity of seeing the documents filed, in support of their claim, by the defendants (respondents,) and of offering such remarks as he might have to make in opposition to their validity, and which under Clause 3, Section 30, Regulation II. of, 1819, he was bound to have done. Under these circumstances, therefore, there is nothing for it but to remand them, in order that this omission may be rectified, after which the case will, of course, be decided *de novo* upon its merits, and a proper order passed with regard to costs.

With reference to the preceding remarks, the appeal is decreed, the collector's orders reversed, and the case remanded. The usual order passed for the return of stamp.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH ESQ., JUDGE.

THE 2ND MARCH 1849.

No. 4 of 1844.

Appeal from the decision of Syed Kumber Ally Khan Bahadoor, Second Principal Sudder Ameen, dated the 13*th April* 1844.

Shumsheer Ally Khan, Munsoor Ally Khan, and on his death, Musst. Bacho Beebee, Appellant,

versus

Dewan Beebee, Defendant.

THE particulars of this case were set forth in my decision dated the 27th December 1848. I confirmed the decision of the principal sudder ameen, but omitted to award mesne profits and interest thereon, from the date of the sudder ameen's decision, to the date of obtaining possession, and also interest upon the costs incurred in this court; and the respondent, consequently, applied for review of judgment, agreeably to the provisions of the Court's Circular Order of the 11th January 1839.

The sanction of the Court of Sudder Dewanny to a review of judgment, was obtained on the 27th January 1849, and the usual steps were taken for procuring the attendance of the parties.

Both parties were in attendance to-day, and the vakeel of the appellants was asked if he had any objections to offer to the points proposed to be reviewed, and he answered that he had none that had not been previously urged by him, and which had been overruled by me on the 27th December 1848.

After again considering the proceedings held in the case, I am of opinion, that the respondent is entitled to mesne profits from the date of the principal sudder ameen's decision to the date of obtaining possession, and also to interest thereon and interest upon the costs incurred in this court, and I accordingly, in amendment of my decision dated the 27th December 1848, decree to the respondent mesne profits at the rate of rupees 410-14-1 *per annum*, from the 11th April 1844, the date of the principal sudder ameen's decision, up to the present time, with interest thereon, making a total of rupees 2,479-15-8, with interest thereon, from this date to the date of realization. I also award mesne profits at the rate of rupees 410-14-1 from this date, together with interest thereon, up to the date of obtaining possession. Interest also is allowed upon the costs of this court, from this date to the date of realization.

THE 2ND MARCH 1849.

No. 37 of 1849.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated the 30th December 1848.

Abool Hossein and others, Appellants,

versus

Korashsha Banoo, Respondent.

THE respondent states that her husband died possessed of 1 dhoon, 12 krants of land, and personal property to the value of 2,000 rupees, leaving herself, a second wife, a sister, and a brother, his heirs, and that they (the remaining heirs) have got possession of his property and refuse to give her any, and she therefore sues for her share, valuing her suit at rupees 292-7-2.

The appellants admit the amount of land, but deny that he left personal property to the value of rupees 2,000, and urge that the respondent was divorced from her husband, who afterwards adopted a son and left him his heir by will.

The moonsiff, in his decision, states that it is proved that the husband of the respondent died possessed of the land stated in the plaint, and of personal property to the value of rupees 2,000 and upwards, and he therefore gave a decree in favor of the respondent.

The appellants urge that the divorce, adoption of a son, and the gift to him, by will, are proved, and pray that the decision may be set aside.

As the amount of property left by the husband of the respondent was disputed by the appellants, the suit agreeably to the Court's Circular Order of the 31st August 1832, and Sudder Dewanny Adawlut Select Reports, 28th February 1846, vol. VII. was not cognizable by the moonsiff at all, for it has been decided by them that a suit for a portion of property claimed under a disputed title, should be determined, as to the court in which it should be instituted, with reference to the value of the whole, and not to the value of the portion sued for. I therefore reverse the moonsiff's decision, and nonsuit the respondent. The appellants' costs to be defrayed by the respondent.

THE 2ND MARCH 1849.

No. 38 of 1849.

Appeal from the decision of Mr Finney, Moonsiff of second Town Division, dated the 28th December 1848.

Musst. Noorjahan, (Plaintiff,) Appellant,

versus

Ahmud Allee, (Defendant,) Respondent.

THIS was a claim for maintenance. The appellant stated that she was married to the respondent in 1202, and that, in the month of

Poos 1205, he beat her and turned her out of the house, and she therefore brings this action to compel him to make her an allowance of 1 rupee a month.

The respondent states that the appellant left his house voluntarily, to reside with her father and mother; and that, although he is anxious for her return, and has repeatedly pressed her to come back, she refuses to listen to him.

As the appellant failed in proving that she had been in any way ill-used by her husband, and the respondent proved that he had repeatedly tried to persuade her to return to him, the moonsiff refused to decree her any allowance. And, after going through the evidence, I can see no reason to interfere, and accordingly confirm the decision and dismiss the appeal.

THE 3RD MARCH 1849.

No. 40 of 1849.

Appeal from the decision of Moulvee Gudah Hossein Cazee, dated the 27th December 1848.

Musst. Reionessa, wife of Ameer Khan, and others, Appellants,

versus

Hureedoss *alias* Ramhoree, fisherman, Respondent.

THE respondent states that he inherited 18 g. 3 c. of rent-free land from his ancestors, Brijeah Buktar and Tarapater, and that in the present measurement the defendants have recorded their names as proprietors of 3 g. 2 c., and he therefore brings this action to correct the papers.

The appellants, who are Mussulmans, declare that they inherit the land from their ancestor Brijeah Buktar, who is distinct from the respondent's ancestor, and denies that the respondent has any right to it.

The moonsiff, discrediting the evidence of the appellants, decreed the case in favor of the respondent.

Among other reasons, the appellants urge that only two out of their nine witnesses were examined, and an examination of the papers shews this was the case. They filed a list of nine witnesses, five of whom only were summoned, but no reason is assigned for not having summoned the remainder. Of the five summoned, two only attended, and no proper measures were taken to procure the attendance of the others. I therefore reverse the moonsiff's decision, and return the case that the moonsiff may summon the appellant's witnesses. The moonsiff will also explain within a week, why he did not summon all the witnesses named. The appellants are entitled to the value of their stamps.

THE 3RD MARCH 1849.

No. 41 of 1849.

Appeal from the decision of Moulvee Gudah Hossein Cazee, Moonsiff of first Town Division, dated the 27th December 1848.

Musst. Reioonissa, Appellant.

versus

Hureedoss *alias* Ramhoree, fisherman, Respondent.

THE respondent brought this action to reverse the measurement papers of 9 g. of land, being part of the 18-3, mentioned in case No. 40, recorded in the name of the appellants.

The appellants claimed the land as part of turruff Mokeemlal Busharut; but the moonsiff, discrediting the evidence adduced by them, gave a decree in favor of the respondent.

The appellants, among other reasons, urge that the moonsiff did not summon and examine all their witnesses, and this is true. Out of nine witnesses, the moonsiff only summoned four, and has given no reasons for not issuing a subpœna upon the others. I therefore reverse his decision, and remand the case for re-trial. The moonsiff will explain within a week why he omitted to summon all the witnesses whose names were recorded in the appellant's list. The appellants are entitled to the value of their stamps.

THE 3RD MARCH 1849.

Appeal from the decision of Moulvee Syud Khyroollah Shah Buduk-shanee, Moonsiff of Zorowargunge, dated the 26th December 1848.

No. 42 of 1849.

Golam Mustopha, Appellant,

versus

Oomer Hyder, Respondent.

No. 54 of 1849.

Oomer Hyder, Appellant,

versus

Golam Mustopha, Respondent.

THIS was an action brought by Oomer Hyder to reverse a summary decision of a deputy collector, dated the 29th December 1847.

The plaintiff stated that he is in possession of a hill, agreeably to a pottah of Musst. Subzabanoo, dated the 23rd Chyte 1203, and that

Golam Mustopha, pretending he had given him a kubooleeut, brought a suit against him in the deputy collector's court for rent for the year 1208, and obtained a decree against him for rupees 14-13-6, and he therefore brings this action to reverse the summary decision, and to set aside the kubooleeut, pretended to have been given by him to Golam Mustopha, and to receive back the rent taken.

Golam Mustopha asserts that the plaintiff voluntarily gave him a kubooleeut for the hill, on the 2nd May 1205, and urges that the deputy collector's decision is correct.

Musst Subzabanoo says the hill is hers, and that she has given a pottah to the plaintiff and receives rent from him.

The moonsiff, in his decision, says it is proved that Subzabanoo is in possession and receives rent from the plaintiff, and that it is therefore improper that Golam Mustopha, who is a claimant to the hill should give a pottah or receive rent till his title is established, and he therefore reversed the kubooleeut given by Subzabanoo to the plaintiff and dated the 23rd Chyte 1205, and the decision of the deputy collector based upon the kubooleeut, dated 2nd May 1205, and directed Golam Mustopha to refund the amount taken from him.

Golam Mustopha appeals on the ground of the reversal of his kubooleeut, dated the 2nd May 1205, and Oomer Hyder, because the moonsiff has not awarded to him double the amount illegally taken; but Musst. Subzabanoo, whose kubooleeut has been reversed, has not appealed at all.

From the features of the case, I believe it to have been the moonsiff's intention to reverse Golam Mustopha's kubooleeut, dated the 2nd May 1205. The tenor of his roobacarree is to that effect, but the date of the kubooleeut reversed has been interpolated both in his written opinion, in the roobacarree, and in the copy given to the appellants, and has been given erroneously. I therefore reverse the moonsiff's decision, and return the case, that he may again go through the papers, and decide the case *de novo*. Both the appellants are entitled to receive back the value of their stamps.

THE 5TH MARCH 1849.

No. 43 of 1849.

Appeal from the decision of Moulvee Gudah Hossein Cazee, Moonsiff of first Town Division, dated the 29th December 1848.

Seetuldeen Bajpie, Appellant,

versus

Hyder Ally Chuprassee, Respondent.

THE respondent states that there is a talook named Baleekutoob, situated in turruff Furahut Khan Hyder, within the zemindary of the appellant, which is divided into the five following portions:

			d.	k.	g.	c.
1	Zimah	Hossein Ally, ...	0	2	15	0
2	„	Noor Bebee and Kumba Beebee,	1	1	0	0
3	„	Abdool Rohoman, ...	0	1	12	2
4	„	Chand Beebee and Mulka Banoo,	1	9	19	3
5	„	Kassim Ally, ...	0	10	13	0
		Total, ...	3	9	1	1

That he (the respondent) purchased Kassim Ally's share at a sale for arrears of rent, but is unable to obtain possession of it, and he therefore brings this action against the zemindar, Seetuldeen Bajpie, and the proprietors of the other four shares of the talook for possession.

All the defendants admit that Kassim Ally's share is 10 k. 13 g., but deny that they have possession of any of it.

After the parties had filed their exhibits, the respondent and Chand Beebee, and her sons, Woozeer Ally and Kassim Ally, filed a deed of compromise, setting forth that Woozeer Ally should retain possession of 13 k. 8 g., belonging to the estate of Kassim Ally, but should pay to the respondent, annually, the sum of rupees 22-3, Kassim Ally and Chand Beebee binding themselves not to dispute his title. The appellant objected to the compromise, and stated that it was fraudulent, and that Chand Beebee, one of the subscribers to it, had altered her pottah, so as to make it appear that she was entitled to more land than she really was, and he therefore prayed that the fabrication might be enquired into. This prayer the moonsiff rejected, and, telling the appellant that he might prosecute the parties, if he pleased, before the magistrate, decided the case agreeably to the deed of compromise.

The appellant urges that the compromise has been made without his consent and that his interests are injured by it, and that his costs have not been awarded to him. He further pleads that under the present law it is impossible for him to prosecute the parties for fabrication before the magistrate, notwithstanding the moonsiff's permission.

The compromise is evidently injurious to the interests of the appellant, who was not a party to it, for by means of it, the respondent gets more land than he is entitled to; more than he claimed. Chand Beebee's pottah has been altered from 1-9-19-3 to 1-15-19-3, and most probably, as the appellant urges, with a fraudulent intent. The moonsiff ought to have enquired into this fact, and to have disposed of the case under the provisions of Act I. of 1848, if he thought the pottah fabricated,—if otherwise, he should have passed an order upon the case according to its merits, for it is probable that the excess of land given to the respondent belongs to the zemindar. I therefore reverse the moonsiff's decision, and desire him with reference to the above remarks to re-investigate the case, and dispose of it according to its merits. The appellant is entitled to the value of his stamp.

THE 5TH MARCH 1849.

No. 46 of 1849.

Appeal from the decision of Moulvee Gudah Hossein Cazee, Moonsiff of first Town Division, dated the 27th December 1838.

Mohun Lal Sookul, Appellant,

versus

Asmut Ally Goldar, Respondent.

THE respondent stated that he had sold the appellant bamboos and grass and other building materials to the value of rupees 36-6-1-9, of which he had only paid him rupees 10, and he therefore sues for the balance.

The appellant simply pleaded payment. In his decision, the moonsiff says it is proved that the appellant purchased building materials to the value of rupees 35-14-10-9, of which he has only received rupees 10, and that, although the appellant filed a list of witnesses for his defence, he took no measures to procure their attendance, and he therefore gave a decree for rupees 25-14-10-9.

The appellant urges that he had not sufficient time allowed him to cause the attendance of his witnesses, and that on the date of decision his vakeel informed the moonsiff that he was on his way to court to comply with the moonsiff's orders, but that he would not postpone the case. From an examination of the record it appears that the appellant served a subpœna upon his witnesses, which was returned into court on the 16th December. On the 23rd December, the appellant was called upon to swear to the necessity of their examination within the period of two days, but he omitted to do so and on the 27th, the moonsiff decided the case. Under these circumstances, I see no reason for disturbing the decision, and accordingly confirm it, and dismiss the appeal.

THE 7TH MARCH 1849.

No. 47 of 1849.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Bhutteeary, dated the 7th January 1849.

Azmutoollah, Appellant,

versus

Ramlochun Goo, gomastah, Mr. H. Randolph, and Mr. James Adam Baroos, and others, Respondents.

THE appellant states that he has 1 d. of land, situated in three talooks, named Shufee Rufee, Aniz Rufee, and Suferaz Khan, at the annual rent of rupees 17-10-10, payable to the respondents, and that he paid the amount due from him for 1206, 1207, and 1208, with

the exception of 3 rupees, 1 anna, and that the respondents distrained and sold his goods, and he therefore brings this action to recover from them the amount taken in excess of the rent due to them.

The respondents state that the appellant holds 10 krants 10 gundahs of resumed rent-free land within their zemindaree, and that in the year 1206 he and his mother made three settlements with them for it,—one for 4 kanees at the annual rent of rupees 10, 2 annas, 6 pies, in the names of Alexander Randolph and James Adam Baroos, the second for the same quantity of land, and at the same rent as stated above in the names of Henry Randolph and James Adam Baroos, and a third for 2 krants 10 gundahs upon the annual rent of rupees 9, 5 annas, in the name of James Adam Baroos; that he failed to pay his rent for1208, and that consequently they sold and attached his property.

In support of his claim the appellant filed two receipts for the years 1207 and 1208, for the aggregate sum of rupees 25-9-10, and produced five witnesses to prove them, but this they failed to do, being not only unable to state the amount paid, but asserting that they had heard merely that the money had been paid and receipts given: these receipts the respondents denied. And as the amount realized by distraint did not exceed that admitted by the appellant to be his annual rent, the moonsiff dismissed his claim. And, after going through the evidence, I can see no ground for interference, and accordingly confirm his decision, and dismiss the appeal.

THE 12TH MARCH 1849.

No. 199 of 1848.

Appeal from the decision of Moulvee Syed Khyroollah Shah Budukshanee, Moonsiff of Bhutteeary, dated the 31*st March* 1848.

Gooreesunker, Appellant,

versus

Mahomed Hashim and others, Respondents.

THE appellant states that Sanchee and Bocha Ghazee are the cultivators of 5 krants rent-free land, called Muno Ghazee and Kanoo, and that he purchased their interests from them on the 9th Maugh 1206, but that Mahomed Hashim, Domun, and others, oppose his taking possession. Mahomed Hashim and Domun state that Muno Ghazee and others cultivate the land and pay rent to him; but that they have no power to sell their interests without their concurrence.

The moonsiff decided that as ryuts they were unable to sell their rights, and dismissed the case.

The appeal was admitted on the 5th November last, to try the point, and the respondent was summoned.

The appellant has filed a pottah, dated the 15th Chyte 1176, in which the ryut's right to hold the land, in perpetuity, at the fixed rent

of rupees 8, 15 annas is set forth; but he has been unable to prove its authenticity by any sort of evidence; the ink is so fresh that it appears to have been recently prepared, and the witnesses who have stated that they have heard that the ryuts, Bocha Ghazee and others, hold the land at a fixed rent, have declared that similar land in the neighbourhood lets at rupees 4 per kanee. Had their right to hold the land in perpetuity been established, the ryuts would have been able to have sold their interests in it, but they have no right to sell their lease, which has been granted to them for one year only. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 12TH MARCH 1849.
No. 211 of 1848.

Appeal from the decision of Moulvee Khyroollah Shah Budukshanee, Moonsiff of Bhutteeary, dated the 31*st March* 1848.

Mahomed Hashim and Domun, Appellants,
versus
Goureesunker and others, Respondents.

THIS appeal is connected with No. 198, decided by me on the 5th November 1848. In that suit, Goureesunker stated that he had purchased 2 krants 10 gundahs of lakhiraj land from Morad, and was kept out of possession by Domun and others. The moonsiff decided that as the land was in the joint occupation of Domun, Hashim, Morad, and others, Morad had no right to sell a specific portion of the land; and this decision was upheld by me. He, however, made all parties pay their own costs, and it is from this part of his decision that the present appeal is brought. As it has been decided that Morad had no right to sell the land, the appellants were justified in refusing to allow the respondents to obtain possession, and they are therefore entitled to their costs. I amend therefore the moonsiff's decision, and decree the costs of suit incurred by the appellants in the moonsiff's court and in appeal against Goureesunker, together with interest to the date of realization.

THE 12TH MARCH 1849.
No. 208 of 1848.

Appeal from the decision of Moulvee Khyroollah Shah Budukshanee, Moonsiff of Bhutteeary, dated the 31*st March* 1848.

Mahomed Hashim and Domun, Appellants,
versus
Goureesunker, Respondent.

THIS is connected with case No. 199. The appellants urge that they have been compelled to pay their own costs, notwithstanding that the suit of the respondent has been dismissed.

As it has been decided that the purchase of the respondent is void, the appellants were justified in opposing his taking possession of the land, and are therefore entitled to their costs. I amend, therefore, the moonsiff's decision, and decree to them the costs incurred by them in the moonsiff's court and in appeal, together with interest thereon to the date of realization, to be defrayed by Goureesunker.

THE 12TH MARCH 1849.

No. 448 of 1848.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 21st July 1848.

Syed Ahmudoollah, Appellant,

versus

John Gonsalves, Respondent.

THE respondent states that 10 gundahs of land belonging to the mother of one Bebun Beebee, were mortgaged to Tunoo Bebee for 14 rupees, but as she did not redeem the mortgage, the appellant took from him the sum of rupees 28, giving him a receipt for them, and promising to pay them to Tunoo Beebee. This he has not done, and he therefore brings this action to recover the amount.

The appellant denies the transaction altogether, and states that the plaintiff and his mother owe him rupees 100, for which he was about to bring his action, and that they have therefore brought this false charge against him.

The moonsiff, in his decision, observes that, although the plaintiff has been unable to prove his claim in a satisfactory manner by the evidence of his witnesses, he is satisfied that it is not a false one nor supported by false witnesses; that the witnesses examined are men of great respectability, several of them being pleaders of his court, who are not likely to depose falsely; that, though called upon to do so, the appellant has not produced evidence of the respondent's debt to him; and that the signature of the appellant to the receipt exactly corresponds with that to the jowab filed in the case. He therefore, under these circumstances, decreed the amount claimed.

The appellant petitioned that the case might be taken up without reference to its number on the file, as the respondent had taken out a process of arrest against him, and his prayer was complied with. Ten witnesses were examined in the moonsiff's court, of whom six state that the appellant admitted a claim made against him by the respondent for rupees 28; but that he pleaded that he had deposited the amount in the court where the complaint against him had been made. They also state that they saw the receipt. Their evidence may be quite true, but it does not prove the claim against the appellant; they only say that a sum of money was demanded, but they

do not specifically state that it was money lent to redeem the mortgage. I altogether discredit the respondent's story for he has assigned no reason why he lent the money to redeem the mortgage, nor why Ahmudoolah should have taken it. It is not even pleaded that the appellant or respondent are either of them connected with the mortgager or mortgagee, and I can therefore discover no cause for their interference. The two witnesses to the receipt for the money were not included in the list of witnesses subpœnaed on behalf of the respondent, and he has assigned no reason for the omission. The payment of the money to the appellant, and the execution of the receipt by him, are consequently not proved, and I accordingly reverse the moonsiff's decision, and dismiss the claim with costs.

THE 12TH MARCH 1849.

No. 203 of 1848.

Appeal from the decision of Moulvee Gudah Hossein Cazee, dated the 31st March 1848.

Mobaruk Ally, (Plaintiff,) Appellant,

versus

Akber Ally and others, (Defendants,) Respondents.

THE appellant states that, on the 1st Kartick 1199, he and Feiz Ally purchased 2 krants, 15 gundahs of land from Dowlut Beebee, which was in the possession of Akber Ally; that he has given up 2 krants 12 gundahs of it, but keeps possession of the remainder, and he therefore brings this action to obtain possession of it.

Akber Ally admits that the land is in his possession, but pleads a pottah from Feiz Ally.

Feiz Ally denies that he has given a pottah to Akber Ally, and states that he and the appellant divided the land between them, and that the disputed land fell to the share of the appellant.

The moonsiff, in his decision, says that the land is proved to belong to the appellant, but in the occupation of the respondent Akber Ally, and he therefore decided that Akber Ally should pay rent for it. The appellant urges that he wants the land, and not the rent, and the appeal therefore was admitted in November last for the purposes of ascertaining whether Akber Ally had any right to retain possession. He filed a kubooleeut alleged to be signed by Feiz Ally and some receipts for rent, but they are all of a subsequent date to the sale of the land to the appellant. As he has been served with notice to quit, and his kubooleeut, if genuine, is not in perpetuity, he has no right to retain possession of the land contrary to the wishes of the purchaser; and I therefore amend the moonsiff's decision, and decree possession of the land to the appellant.

THE 13TH MARCH 1849.

No. 51 of 1849.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 12th January 1849.

Meimoonah Beebee, Appellant,

versus

Kumer Ally and others, Respondents.

THIS was an action to close a footpath. The respondent states that the appellant has recently made a footpath across his premises, and, on his stopping it up, brought a suit against him under Act IV. of 1840, in the magistrate's court, and obtained a decree, and he therefore brings this action to reverse the decision and stop the road.

The appellant admits that the grounds, through which the path passes, belongs to the respondent, but pleads a prescriptive right of way which she and her ancestors have long enjoyed.

The moonsiff, after hearing the evidence of both parties, decided that the road should be stopped up as the appellant did not appear to have used it for a longer period than five years. In appeal the appellant again urges her right of way; and that she has proved the exercise of the right uninterruptedly for a period of twenty years and upwards.

The witnesses, examined on the part of the appellant, declare the road has been used for more than twenty years, and that it is necessary to the appellant to enable her servants to proceed to some land in her possession. The respondent's witnesses, and the report of the ameen, deputed to hold a local investigation, shew that the road has been open about five years, and that no road existed till the appellant took a lease of some lands to which the road leads. Under these circumstances, I cannot credit the appellant's witnesses, for until she took the lands the road was unnecessary to her. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 15TH MARCH 1849.

No. 52 of 1849.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated the 28th December 1848.

Tussesseeram, Appellant,

versus

Ramdass, Respondent.

THE respondent states that, in the month of Bhadoor 1204, he lent the appellant, who is his cousin, 10 rupees in the presence of witnesses, but as he has never repaid him, he brings this action for the principal and interest.

The appellant denies the transaction, and pleads that he has quarrelled with the respondent.

The respondent produced four witnesses, who proved the transaction, but the appellant took no steps to prove his quarrel, and the moonsiff therefore decreed the principal, but no interest.

The appellant urges that he had not proper time allowed him to produce his evidence, but an examination of the record shews that proof was called for from him on the 29th June, and on the 23rd October he was directed to take measures to cause the attendance of his witnesses, which he altogether omitted to do, and I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 15TH MARCH 1849.
No. 56 of 1849.

Appeal from the decision of Moulvee Syed Khyroollah Shah Buduk-shanee, Moonsiff of Bhutteeary, dated the 27th March 1848.

The Collector of Chittagong, Appellant,

versus

Mahomed Tuckee, Mahomed Ariff, and others, Respondents.

MAHOMED TUCKEE and others stated that 1k. 1g. 3c. 1k. of land belonged to their turruff Neihir Mahomed, and was in the cultivation of Mahomed Ariff and others, who used to pay them rent for it, but that, having in collusion with the measuring ameen got it measured in their own names, they withhold their rent.

Mahomed Ariff and others deny that they have ever paid rent to the plaintiffs, and state that part of the land is rent-free, and part belonging to their turruff of Dowlut Kala.

The collector of Chittagong pleads that the land is waste and belongs to Government as part of a noabad talook, and that, when the plaintiffs' turruff was measured, they executed a document declaring they had in their possession all the land they were entitled to.

After the completion of the pleadings, Mahomed Tuckee and others, the plaintiffs, and Mahomed Ariff and others, the defendants, filed a soolahnamah, by which it was arranged that the land should be divided among them, and the costs of suit be paid by each party respectively, and the moonsiff passed a decree accordingly.

After the period of appeal had elapsed, the collector applied for permission to appeal, agreeably to the provisions of Clause 1, Section 4, Regulation XXIII. of 1814, assigning as his reason for not appealing within the prescribed period, that the copy of the decree had been given to his vakeel, who had neglected to send it to him. This application was rejected by me on the 14th July 1848, as I considered the reason assigned insufficient, for the Section pleaded by him declares that the period of appeal shall be calculated from the date on which the copy of the decision shall be presented to the party

or his vakeel, and the remedy for such neglect was, I considered, a suit for damages agreeably to the provisions of Clause 1, Section 12, Regulation XXVII. of 1814. On appeal to the Court of Sudder Dewanny Adawlut, my decision was reversed, as the Court considered the order, however proper in general, as improper in this particular instance, as the decree would prove injurious to the legal rights of the Government, and permission was accordingly granted to the collector to file his appeal.

The collector urges that the land belongs to his noabad talook, and that the plaintiffs have no legal claim to it, and that they have executed to him a document, after the completion of the measurement of their estate, certifying that they have in their possession all the land they are entitled to; that the decree passed is injurious to Government, and ought to be set aside, as the Government was no party to the compromise.

The compromise upon which the moonsiff's decree is based, is undoubtedly injurious to Government, and as the Government was no party to it, it must be set aside. I accordingly reverse the moonsiff's decision, and set aside the soolehnamah, and return the case to the moonsiff that he may take evidence from the contending parties, and decide it on its merits. The applicant is entitled to the value of his stamp.

THE 15TH MARCH 1849.

Appeal from the decision of Cazee Farahutoollah, Moonsiff of Bhojpoor, dated the 4th January 1849.

No. 58 of 1849.

Ramhoree Deenomonee, (Defendant,) Appellant,

versus

Sri Ram, (Plaintiff,) Respondent.

No. 60 of 1849.

Sri Ram, Appellant,

versus

Ramhoree Deenomonee, Respondent.

THE plaintiff Sri Ram stated that Sham Podar, the father of the defendant and two other brothers and himself, died, leaving land and personal property, to which they are all entitled to share equally, but that the defendants have kept possession of more than their share, and he therefore brings this action to compel them to give up to him and his brother, Doorgadass, who is a minor living under his protection, the amount of property they are legally entitled to.

The moonsiff, in his decree, refused to pass any order relative to the land, as Doorgadass is a minor, but decreed to the plaintiff the share of personal property to which he and his brother were entitled,

and from this decision both parties have appealed. As this is a suit concerning the right of inheritance to landed property, the moonsiff ought agreeably to Clause 4, Section 6, Regulation V. of 1831, to have published a written notification, requiring all persons who may have any claim to come forward and prefer it within a limited period, but this he has omitted to do. His order decreeing one part of the claim, and refusing to recognise the other, because one of the heirs is a minor, is inconsistent, and I therefore reverse his decision, and direct him to issue the proclamation alluded to above, in the manner prescribed by the Regulation, and, after taking evidence to any claims preferred, and a bywastah from the pundit of the court, to adjudge in his decree the proportions to which all the claimants may be respectively entitled. The appellants are entitled to the value of their stamps.

THE 19TH MARCH 1849.

No. 63 of 1849.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Bhutteeary, dated the 6th January 1849.

Shumsheer Ally and Yoosoof Ally, Appellants,

versus

Futee Ally and others, Respondents.

THE appellants and Hyder Ally and Mahomed Kassim stated that 12 k. 1 g. of land situated in the mouzahs of Selimpoor and Fooltulee, and belonging to talook Neeaz Mahomed, were purchased by their ancestors, and that they obtained possession of 5-3, situated in Fooltulee, but have been unable to obtain possession of 6-18, situated in Selimpoor, and that Chamaroo and others have entered it as the itmam of Futee Ally, and belonging to talook Lalkhanoo, that on the 9th Bhadro 1209, Chamaroo agreed to give them up the land, provided they waived their claim to mesne profits, and that to this they consented, but that 3 kanees of land measured in dags 5659, 5660, 5663, are in the possession of Futee Ally and others, and that they refuse to give them possession, and they therefore bring this action to compel them to do so.

Chamaroo filed a reply, bearing out the plaintiffs' statement, but Futee Ally objects that the plaintiffs have not stated when and how their ancestors obtained the land, which they maintain to be in talook Lalkhanoo, and to have been for many years in their possession, and that the land having been already sued for by them, their claim is barred by previous decisions of the court.

The moonsiff in his decision states that it is established beyond all doubt, by previous decisions, that the land belongs to talook Lalkhanoo and is part of the itmam of Futee Ally, and that, in the year 1836, Shumsheer Ally admitted that he had been out of possession for

eighteen years, and he therefore dismissed the claim as barred by Section 14, Regulation III. of 1793.

From this decision, Shumsheer Ally and Yoosoof Ally alone appeal, and plead that their suit has been instituted within the period of twelve years. As I was unable to discover from the plaint the exact period from which the institution of the suit was calculated, I asked the pleader, and he replied that the time should be calculated from the year 1200, the date of the collector's measurement, as that is the date at which the appellant first discovered the exact position of the land. There is no evidence whatever to shew that the land sued for has ever been in the possession of the appellants or their ancestors, and it is proved by a decision of Moulvee Budeeoodeen, sudder ameen, dated the 14th January 1836, in which Chamaroo was plaintiff and Mussoor Ally and Shumsheer Ally, defendants, that at that date Shumsheer Ally pleaded he had been out of possession for eighteen years. This suit therefore is barred, and the plea that the twelve years should be calculated from the date of the collector's measurement, or 1,200, is inadmissible. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 19TH MARCH 1849.

No. 64 of 1849.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 13th January 1849.

Gokul Deo, Appellant,

versus

Durumnarain Doss, Respondent.

THE respondent states that, on the 12th Poos 1251, he lent the appellant and his brother, Gopal Deo, rupees 14, and took a bond from them, and he brings this action to recover the amount.

Gokul Deo denied all knowledge of the transaction, and pleaded that his brother was a minor, and that on the alleged date of the transaction they were at Dulghat, and received a pottah for 5 gundahs of land from their zemindar, and that it was therefore impossible that they could have been in the town of Chittagong, and that, moreover, the respondent bore ill-will towards him, because he had refused to give false evidence in his favor in some suit in which he was interested.

Gopal Deo did not appear, and the moonsiff therefore issued the usual notice at his usual place of residence, and called upon both parties to prove their pleas, and, after hearing the evidence, decreed the amount claimed.

The appellant urges that the witnesses have not proved the bond, and that his defence is proved, and that as he can write it was

improbable that he should have allowed any one else to affix his signature to the bond, if it had been really executed.

Three witnesses were examined on behalf of the respondent, one of whom swore to the execution of the bond, but stated that the money lent was rupees 19. The two others also prove the bond, and depose to the sum of rupees 14, as the amount lent to the appellant and his brother. Four witnesses were examined on behalf of the appellant, of whom two deny that they know any thing about him. The other two state that he was in the service of the respondent during the month in which the bond was written. Their testimony therefore supports the respondent's case rather than the appellant's defence. And had he really received a pottah from his zemindar in Dulghat on the date of the bond, he would without doubt have filed it in the moonsiff's court, yet he has omitted to do so. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 19TH MARCH 1849.

No. 66 of 1849.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Bhutteeary.

Ramchurn Ghose, Appellant,

versus

Kaledass Ghose, Respondent.

THE respondent stated that the appellant borrowed from him rupees 13, in the month of Jeit 1200, and that in the month of Jeit 1204, they settled accounts and the appellant wrote a kistbundee for rupees 19-12, of which he has paid nothing.

The appellant denied the transaction and pleaded enmity, but he produced no witnesses to prove it.

The moonsiff decreed the case, as the execution of the kistbundee was proved, and he observed that the handwriting of the appellant upon his jowab exactly corresponded with that of the deed.

The appellant urges that the moonsiff omitted to examine two witnesses, whose names are on the kistbundee, and omitted to take evidence from him to the existence of enmity with the appellant, and he further pleads that if proved the transaction is contrary to law.

The execution of the kistbundee is proved by the evidence of two witnesses, and if the appellant wished the other witnesses to be examined he should have petitioned the moonsiff to summon them on his behalf. The moonsiff called upon the appellant to prove his defence, but he omitted to do so. The execution of the kistbundee is perfectly legal, and the appellant has omitted to state what law he considers it repugnant to. I confirm the moonsiff's decision, and dismiss the appeal.

THE 20TH MARCH 1849.

No. 68.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 17th January 1849.

Baker Ally and Mohsun Ally, Appellants,

versus

Hussun Ally, Respondent.

THE respondent stated that, on the 3rd Aughun 1208, he purchased the talookdaree rights of 9 krants 10 gundahs, but that the appellants have obtained possession of 2 krants 5 gundahs, which they will not give up, and he therefore brings this action to recover them together with mesne profits.

The appellants plead that the land was mortgaged to them by the respondent on the 11th Jeit 1203, for the repayment of rupees 28, borrowed from them, and has not been redeemed.

The moonsiff called upon the appellants to prove their defence, but they omitted to do so; and as the plaintiff proved his claim, he gave a decree in his favor.

The appellants urge that all the documents necessary to their defence were in the possession of Baker Ally, who was in prison, and that they could not therefore be filed.

The case, I observe, was instituted on the 3rd of May 1848, and in July, November and December, the appellants were called upon to prove their pleas. On the 17th January, previous to the trial of the suit, the appellant's pleader was asked why he omitted to file his documents, and stated that he had repeatedly spoken to his clients, but that they took no steps to produce them. Had the plea of imprisonment been a valid one, he would undoubtedly have made it before the moonsiff, which he did not do, and were it true, it would be unavailing, as the appellant might have moved the court to postpone his trial or have transmitted his documents to his pleader. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 24TH MARCH 1849.

No. 70 of 1849.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Bhutteeary, dated the 10th January 1849.

Mahomed Ally, Appellant,

versus

Rammonee and others, Respondents.

THIS was an action brought by the appellant to enhance the rent of 6 gundahs of land, in the cultivation of the respondents, and to obtain arrears of rent for the year 1209.

The respondents pleaded that the land is only 5 g. 1 c., which, together with another field of 6 g. 1 c., they hold at the fixed rent of rupees 1-8, agreeably to a pottah of Mahomed Rowshun, written by the plaintiff on the 28th of Assin 1180.

The moonsiff, upon the 18th August, called upon both parties to file their exhibits, and on the 13th September deputed an ameen to measure the land, who reported that 4 g. 2 c. 1 k. 7 t. is in the cultivation of the respondents, and that the lands let in the neighbourhood for rupees 3 per kanee, or where salaamee is given for 2-8.

The moonsiff states that the respondents can give no proof of their right to hold the land at a fixed rent, or to their having paid any salaamee; but he nevertheless, in consideration of their long occupation, considered them entitled to a settlement at rupees 2-8 per kanee, and gave a decree accordingly. He refused to decree rent for the year 1209.

The appellant urges that, according to the ameen's report and the moonsiff's own proceeding, he is clearly entitled to rupees 3 per kanee, and also to rent for the year 1209.

The moonsiff's investigation is very incomplete. He has taken no evidence to the issue of the proclamation which, agreeably to the provisions of Regulation V. of 1812, is necessary as a preliminary step to a suit for enhancement of rent. He has stated no reason why he refuses to give a decree for rent for the year 1209, but contents himself with asserting that the appellant is not entitled to receive it. He has decreed a settlement for 5 g. 1 c. of land, when the ameen's measurement shews that there is only 5 g. 2 c. 1 k. 7 t., and he has taken no evidence in his own court from either of the parties, nor called upon them, as he ought to have done, a second time, to produce it. I therefore reverse his decision, and return the case that, with reference to the above remarks, he may, after giving the parties time to produce their evidence, decide the case upon its merits. The appellant is entitled to the value of his stamp.

THE 24TH MARCH 1849.

No. 71 of 1849.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 12th January 1849.

Abdoollah, Appellant,

versus

Futee Ally Nazir, Respondent.

THE respondent states that, on the 22nd Jeit 1254, corresponding with the 4th June 1847, he advanced the respondent rupees 60, for 950 arees of rice, and took from him a bond for the amount; and as he has not paid, he brings this action to recover it.

The appellant denies the transaction, and states that it has been falsely brought against him, because he has, as the agent of Musst. Soormah Beebee, the sister-in-law of the respondent, brought an action against him.

The execution of the bond and the payment of the money were proved, but the existence of enmity the moonsiff considered not proved, and he therefore decreed the amount claimed.

The appellant urges, as before, a quarrel with the respondent, and moreover states that he is a Syed, and yet he is described as a Sheik in the bond, and that he lives in Meteemundee, whereas his residence is in the bond declared to be Patumtoolee; that he, moreover, obtains his livelihood as a mooktear, and it is therefore improbable that he should have engaged to deliver rice, as if he were a trader.

The bond is dated 22nd Jeit 1254, or the 4th June 1847, and it appears that in the month of May the appellant wrote a petition against the respondent on behalf of his sister-in-law; but this is insufficient to prove such enmity as to preclude the probability of any transaction taking place between the parties. The respondent may have lent him the money, with the view of detaching him from his sister-in-law's cause, or at least with the view of obtaining power over him, or he may not have known that he drew up the petition. He did not in the moonsiff's court object to the title of Sheik; and Patumtoolee and Meteemundee are proved to be so close together that they are scarcely distinguishable. The objection that he is no trader, and therefore not likely to have given rice, is an ingenious one, but will not avail him, as it is usual for Mussulmans to draw out their bonds for rice, with the view of eluding their own laws which forbid them to take interest. The execution of the bond is fully established; and I therefore confirm the moonsiff's decision, and dismiss the appeal. The appellant has rendered himself liable to fine for declaring, in his petition, that the respondent is a notorious liar and his witnesses street beggars, and I accordingly fine him rupees 10. The respondent, who has not been summoned, must pay his own costs in appeal.

THE 24TH MARCH 1849.

No. 188 of 1848.

Appeal from the decision of Baboo Nubkishore Sein, Acting Moonsiff of second Town Division, dated the 22nd March 1848.

The Collector of Chittagong, Appellant,

versus

Abool Hossein and others, Respondents.

THE respondents state that 2 k. 7 g. 3 c. situated in turruff Shah Suger, belonged to their ancestors, and were held rent-free; that

the turruff was sold, and purchased by Government; and that the Government, without giving him notice, made a settlement with Neeamut Ally for his lands; and he therefore brings this action to reverse the settlement and to compel the Government to settle with him.

Neeamut pleaded that a proclamation was issued by the deputy collector inviting parties to come forward and settle for the land in question, and that he accordingly applied for and obtained a lease of it.

The collector stated that the suit called for no particular notice on his part, as it was immaterial to him to whom the right of settlement belonged.

The moonsiff, in his decision, observes that there is no satisfactory proof of the issue of the proclamation, and he therefore reversed the settlement made with Neeamut Ally, and declared the respondents, Abool Hossein and others, entitled to it, and he made the collector answerable for the costs of suit, as the omission to issue the proclamation on his part was the cause of the present action.

From this decision the collector appeals, pleading that, agreeably to Section 23, Regulation VII. of 1822, he ought not to have been made a party to the suit, and that it is therefore very hard that he should be obliged to pay the costs of suit, which amount to rupees 4-12-9. This appeal was admitted in September last, and notice was served on the respondent, who filed an answer, but afterwards defaulted, and, though served with the usual notice, has not again attended court.

The proceedings held by the deputy collector in this case were conducted agreeably to Regulation VII. of 1822; and although his omission to issue the proclamation alluded to above, was the cause of the action, he cannot be held responsible for the cost. Clause 2, Section 23, Regulation VII. of 1822, provides that the regular suits which may be instituted to contest the proceedings of the collector under this regulation, shall be of the nature of an appeal to court in its regular jurisdiction from a summary award, and it shall not therefore be necessary for the collector or other officer of Government to be a party to the action. The deputy collector therefore, in his capacity of judge, is not amenable. I accordingly amend the moonsiff's decision, and declare that the costs of suit and of appeal shall be defrayed by the respondent.

THE 26TH MARCH 1849.

No. 72 of 1849.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 30*th December* 1848.

Kurreem Buksh and others, Appellants,

versus

Lalchand Chowdhree, Respondent.

THE appellants state that in the year 1198, their father's property, consisting of 7 kanees of land, was brought to sale for arrears

of rent, and was purchased by Chand Meeah, with his money, but that he not only kept possession of the land, but sold it to Lalchand Chowdhree, the son of Foolchand Chowdhree; that in the year 1199, Foolchand forcibly dispossessed them of the land in question, and also of 1 k. 10 g., adjoining it, but that to prevent its being sold, they paid the rent for it in 1199 and 1200, and brought an action to set aside his sale; that they obtained a decree to the effect, and obtained possession of the land in 1202, and they therefore bring this action to obtain rent for the years 1199, 1200, 1201, at the rate of rupees 3 per kanee, which they allege the respondent agreed to give them if they obtained a decree.

The respondent denied that he ever ousted the appellants out of the land or ever retained it in his possession. And the moonsiff, considering the case not proved, and the statement of the appellants, that the respondent agreed to pay them rupees 3 per kanee, very improbable, dismissed the claim.

The appellants urge that their claim is proved, as also that they paid rent for it during their dispossession.

Five witnesses have been examined, who state that about seven or eight years ago the appellants were ousted from their land by Foolchand Chowdhree, and that it remained waste for two or three years. A receipt for rent paid into the collector's treasury for the year 1199 by the appellants is also filed. The evidence of the witnesses is not sufficiently precise: they are unable to state the year in which the alleged dispossession occurred, and whether the land was out of cultivation two or three years. The receipt for rent, in the absence of satisfactory evidence to the contrary, must be considered as proof of the possession of the appellants during the year 1199. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 26TH MARCH 1849.

No. 74 of 1849.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated the 15*th January* 1849.

Bindrabun Canongoe, Appellant,

versus

Goluckchunder Canongoe, Respondent.

THE respondent states that on the 11th Srabun 1208 he lent the appellant, who is his cousin, rupees 18, upon a bond, which he has failed to redeem.

The appellant denies the transaction and pleads estrangement and enmity to the respondent.

Two witnesses proved the execution of the bond and the payment of the money; and as the appellant, though repeatedly called upon, failed to adduce any evidence to his defence, the moonsiff decreed the case against him.

The appellant urges that only two out of six witnesses to the bond were examined, and that he is himself able to write and the signature to the bond is not his.

The bond is proved by the evidence of the two witnesses who have been examined; and had they been necessary to him, the appellant might have summoned the other four on his behalf. The signature to the bond corresponds exactly with that of the appellant to his defence; and I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 27TH MARCH 1849.

No. 77 of 1849.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 20th January 1849.

Mahomed Makeem, darogah, Appellant,

versus

Mahomed Hosein, Respondent.

THIS was a suit brought by the respondent to set aside a decree of the deputy collector, dated the 31st September 1847.

The respondent stated that he cultivated 7 k. of land, belonging to the appellant at the annual rent of rupees 13, that in the year 1208 he paid to him rupees 6, and received an acknowledgment, but that the appellant refused to receive the remaining rupees 7, and afterwards sued him for rent for the whole year and obtained a decree, and he therefore brings this action to recover the rupees 6 paid to him as well as the costs incurred by him.

The appellant denies the acknowledgment, and states that the whole rent of 1208 is due to him.

As the moonsiff considered the acknowledgment proved, he modified the decision of the deputy collector, and decreed to the respondent rupees 6 principal and the costs of suit in his court.

The appellant urges that the acknowledgment is not proved, and that the moonsiff ought to have only awarded costs in proportion to the decree.

The acknowledgment is duly proved by the evidence of two witnesses, and the handwriting agrees with the appellant's signature upon his defence and power of attorney, and two other witnesses also depose to having heard him acknowledge its execution. The moonsiff decreed to the respondent the whole of his claims with the exception of the costs incurred by him in the collector's court, and he has assigned no reason for the omission. Had he appealed, he would have been entitled to an award for them. I see no reason to interfere with the moonsiff's decision, and accordingly confirm it, and dismiss the appeal.

THE 27TH MARCH 1849.

No. 78.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 12th January 1849.

Musst. Latooree, Appellant,

versus

Luckey Beebee, Respondent.

THE respondent brought an action against Futee Ally, the husband of the appellant, for the value of a bond. He defended the suit, but left Chittagong before it was decided. A decree was given against him. The present appellant is his wife, but has no authority on the part of her husband to prefer an appeal, and without it the appeal is inadmissible. I therefore reject it.

THE 27TH MARCH 1849.

No. 79 of 1849.

Appeal from the decision of Cazee Furahuttoollah, Moonsiff of Bhojpoor, dated the 25th January 1849.

Prankishen Ramguttee, Appellant,

versus

Jeichunder and others, Respondents.

THE appellants state that, on the 28th Bysack 1197, the respondents borrowed rupees 50 from Rammanick Sheegdar, the father of Ramguttee and Durputtee, and the brother of Prankishen and Ramjee; that Rammanick died in 1198, leaving his children minors, one of whom, Ramguttee, came of age in 1208; and consequently he and Prankishen sue for the value of the bond, stating that the interest of Durputtee, the minor, and Ramjee, who is absent, will be cared for by them.

The respondents were duly served with notice, but did not appear.

The moonsiff, observing that the suit had been instituted after the lapse of twelve years, dismissed the claim. The moonsiff's decision is clearly wrong, for although Prankishen and Ramjee's claim will not be good, that of Ramguttee will be on behalf of himself and his minor brother, if he proves his minority. I therefore reverse the moonsiff's decision, and return the case that he may take evidence as to the minority of Ramguttee. If it be established, he should then take a bywastah from the pundit of the court as to the amount each of the heirs is entitled to, and, rejecting those of the brothers whose claims are barred by the statute of limitation, decide upon the justice of their claim, and pass an order on the merits of the case. The appellants are entitled to the value of their stamps.

THE 27TH MARCH 1849.

No. 80 of 1849.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Zorowargunge, dated the 8th January 1849.

Einah Beebee, (Plaintiff,) Appellant,

versus

Illaee Buksh and others, Respondents.

THIS was an action for the value of a bond. The respondents denied the transaction, and the moonsiff, remarking in his decision that the appellant had only produced one witness, dismissed the claim.

The appellant urges that her vakeel, Doorgadoss, died, and that she was not served with notice of his death, or aware that her witnesses were required.

It appears that the appellant filed her list of witnesses on the 20th July 1848, and took out a subpœna, which was duly served. On the 3rd of August there is an order desiring her to produce her witnesses in three days, but no vakeel appears to have been in attendance. The suit was carried on by her vakeel, Mahomed Hossein, who was present at the examination of two witnesses, but it does not appear that he was aware of the order to the appellant to produce her witnesses within three days, nor was the order repeated. I therefore reverse the moonsiff's decision, and return the case that he may take the appellant's evidence and decide the case on its merits. The appellant is entitled to the value of her stamp.

THE 29TH MARCH 1849.

Appeal from the decision of Moulvee Syed Khyroollah Shah Buduk-shanee, Moonsiff of Bhutteeary, dated the 20th December 1848.

No. 23 of 1849.

Bhyrubchunder Kher, Appellant,

versus

Hurdyal, Respondent.

No. 25 of 1849.

Musst. Tarance, relict of Jogonath Sein,

versus

Hurdyal.

THE respondent stated that his ancestor, Sissooram, had purchased some rent-free land, named Mutkhan *alias* Mustan Khan, which had descended to him, and is situated in mouzah Kayooreah; that turruff Kartikram was sold for arrears of revenue and purchased by Bhyrubchunder Kher, and that the land has been settled with Jugo-nath, and measured as the property of Bhyrubchunder, and he there-

fore brought this action to reverse the measurement papers, and to obtain a lease of the land.

The collector pleaded that there is no land recorded as Mutkhan in the measurement papers of 1126, but that there is a tenure recorded as Himut Khan, which was in the possession of Golam Hossein, and that it is situated in turruff Kartikram, which has been purchased by Bhyrubchunder Kher.

Bhyrubchunder pleaded that the land is situated in turruff Kartikram, which has been purchased by him; and Musst. Taranee, the wife of Jugonath, that the land has been settled with her husband, who has since deceased.

The moonsiff, in his decision, states that it is proved by the deed of sale and kurcha papers filed by the respondent, and the evidence of the witnesses, that the land belongs to the rent-free tenure of Mutkhan *alias* Mustan Khan, and has long been in the possession of the respondent, and he accordingly reversed the settlement and the measurement papers.

Both Bhyrubchunder and Taranee appeal, and urge that the respondent has altogether failed to prove his title, and that his claim is without foundation. Their appeals were admitted in February last for the purpose of trying whether the land belongs to the zimah of Mutkhan *alias* Mustan Khan, and was purchased by Sissooram, the respondent's ancestor, or whether it belongs to turruff Kartikram.

The respondent has altogether failed to prove his title. He has filed a deed of sale, dated 5th Bysack 1102, which has clearly been recently prepared and soaked in water to give it the appearance of age. Had the tenure existed in 1102, it would have been recorded in the measurement papers of 1126, which it is not. The kurcha filed by him is unsigned by any officer, and there is a blot immediately preceding the word Mutkhan, rendering it probable that the papers referred to Himut Khan; the syllable 'He' being concealed by the blot. On being questioned by the moonsiff, moreover, the respondent's vakeel stated that the land of the zimah Himut Khan was the same as that Mutkhan, and the former is satisfactorily proved to be in turruff Kartikram. I therefore reverse the moonsiff's decision, and dismiss the respondent's claim. All costs of suit and appeal to be defrayed by the respondent.

THE 29TH MARCH 1849.

No. 212 of 1848.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 6th April 1848.

Noor Mahomed, Appellant,

versus

Shamut Ally, Respondent.

THE appellant states that in the month of Poos 1208, the respondent bought at his shop wire and tusseh thread, to the value of

rupees 2-4, which he has not paid to him, and he therefore brings this action to recover the value.

The respondent denies the transaction altogether, but says that the appellant one day demanded from him 3½ annas, which he demurred to, and he has therefore brought this action against him.

The moonsiff considered the purchase of the goods proved, and also the payment of their value with the exception of 3½ annas, which the witnesses deposed to the respondent's having admitted as due from him to the appellant, and he therefore decreed that amount, together with half the costs of suit.

The appellant, dissatisfied, appealed; but as there was no satisfactory evidence of the sale of the goods to the respondent, the appeal was admitted in December last, and the appellant was desired to produce any further evidence he might have. Up to this time, however, he has produced none, and had the transaction really occurred, it would, without doubt, have appeared in his daily ledger, which he would have produced in court. I therefore reverse the moonsiff's decision, and dismiss the appellant's claim with all costs.

The 29th March 1849.

No. 218 of 1848.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated the 15th April 1848.

Magun Dass, Appellant,

versus

Morellee Mahajun, Respondent.

The respondent states that he purchased 3 k. 6 g. of land, from the appellant, on the 14th Maugh 1205, and got his name registered in the collector's office as proprietor on the 7th October 1844, that Ramdas Sein had a decree against the appellant and attached 4 g. of the land sold by him to the respondent, on the 7th January 1845, and he accordingly brings this action to reverse the sale.

The appellant denied the sale of the land to the respondent, but as it was fully proved, and the fact of the respondent's possession established, the moonsiff reversed the sale.

The appellant urged that the sale of the land to him is not proved, and that the land is still in his possession. The appeal was admitted in January last, to ascertain when the land was attached in execution of the decree, as there was no document in the case to prove the point. The respondent has filed the necessary document, by which it is proved that the attachment took place on the 6th Bhadro 1206, whereas the land was sold to the respondent on the 14th Maugh 1205. The sale therefore took place before the attachment and is legal; and I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 29TH MARCH 1849.

No. 592 of 1849.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated the 12th September 1849.

Lalchand Chowdhree, Appellant,

versus

Baker Ally, serang, Respondent.

THE respondent states that the appellant appointed him the serang of a sloop belonging to him, in the month of Kartik 1208, and that he, in consequence, went on board, taking with him a box containing various property, and remained till the 10th Bysakh 1209, when the appellant came on board and forcibly turned him out of the vessel, and appropriated the contents of the box, and he therefore brings the action to obtain their value, which he estimates at rupees 63-14.

The appellant states that he appointed the respondent to the charge of a sloop, as stated by him, and afterwards went to Seetacond, and that on his return he heard the respondent had absconded, and he consequently appointed one Meerza Ally in his place.

The moonsiff, considering the claim proved, decreed the case, and the appeal was admitted in January last, to ascertain whether the parties, who were sworn to have been seen carrying away the respondent's property, were the servants of the appellant or not.

The respondent filed a reply in which he admits that he does not know the names of the parties who carried away the property, and there is no evidence in the case to shew who they were or whether they were employed by the appellant or by the respondent. Without proof to these points the claim made against the appellant cannot stand. I therefore reverse the moonsiff's decision, and dismiss the suit with costs.

THE 30TH MARCH 1849.

No. 24 of 1849.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 30th December 1848.

Ashruff Ally, Appellant,

versus

Musst. Abjan, daughter of Munoo, Respondent.

THE respondent states that her father Munoo was possessed of 15 gundahs of land, and died in 1202, having previous to his death executed a hibahnamah, giving her 14 annas of his property, and the remaining 2 annas to her mother, Pran Beebee; that in the month of Bhadro 1202, Mahomed Hossein, the father of Ashruff Ally, took advantage of their friendless condition and dispossessed them, and as

she (respondent) is now of age, she sues to recover her share of her father's property, in virtue of her hibahnamah, together with mesne profits.

Ashruff Ally replies that his father purchased the land from Pran Beebee and Mahomed Rufee, and obtained possession of it, and that he never took forcible possession of the land.

The moonsiff in his decision says it is proved that Munoo died possessed of 15 gundahs of land, and that agreeably to the Mahomedan law, the respondent is entitled to 13 g. 1 c. 3. d. and Pran Beebee to 7 c. 1 k. 3 d. of it, and he rejected the pleas of sale set up by the appellant, as the sellers had no right to dispose of the land.

The appellant urges that the respondent claims this land in virtue of her hibahnamah, and alleges that she was forcibly dispossessed of it by his father, and that consequently, the decision of the moonsiff is repugnant to her claim.

The respondent rests her title entirely upon the hibahnamah, and does not claim as heir, and the appeal therefore was admitted in February, to ascertain whether the respondent's title is proved.

The respondent is unable to produce the hibahnamah, but states it was in the possession of her mother, who has lost it: she has produced four witnesses to prove its existence, but their evidence is very unsatisfactory. They state that at the time of its execution, Munoo was very ill and died shortly afterwards, and though they can declare that the respondent is entitled to 14 annas of it, they cannot state the year or the month in which the deed was executed. The respondent has not attempted to prove that the land was in her possession, and that she was forcibly dispossessed of it by Mahomed Hossein, the father of the appellant. Under these circumstances, I reverse the moonsiff's decision, and dismiss the suit. The costs of both courts to be defrayed by the respondent.

THE 30TH MARCH 1849.

No. 26 of 1849.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 21*st December* 1848.

Runnoo Ghazee, Appellant,

versus

Sonaram Ghazee, Respondent.

THE plaintiff states that he has a pottah for 1 k. 5 g. of land, including a stream of water, for which he pays Mudun Mohun Adekaree rupees 2, 8 annas *per annum;* that in the year 1200, the defendant took from him 4 cowrees of the stream agreeing to pay him rupees 2 a year; that he paid him in 1203, but has not paid since; that he consequently attached his property from the year 1208, and now

brings this action for rent from the year 1204 to 1209.

The defendant denies the agreement, and states that on the 10th Chyte 1209, he and his brother, Ramdhun, took a pottah from the plaintiff, agreeing to pay him jointly for the land 1 rupee *per annum*.

The moonsiff, in his decision, states that it is proved that the defendant and his brother Ramdhun wash clothes at the same ghat, and it must be presumed, therefore, that they hold it agreeably to the same pottah, and he therefore dismissed the claim.

The appellant pleads that the defendant and his brother are separate, and hold separate places for washing, and that this is proved by the decision in the case under Regulation V. of 1812, filed in the case.

From the evidence adduced in the case, and the decision under Regulation V. of 1812, it is proved that the two brothers are separate, but there is no evidence to shew that the respondent made any settlement for the 4 cowrees as set forth in the plaint. As he admits that he is in the habit of washing clothes at the ghat, within the boundaries of the appellant's pottah, it would be unjust to dismiss the appellant's suit, as the respondent might continue to occupy the ghat without paying rent. I therefore amend the moonsiff's decision, and decide that the respondent shall within the period of one month make a settlement with the appellant or abandon the ghat. The costs of suit to be defrayed by the parties respectively.

THE 30TH MARCH 1849.

No. 204 of 1848.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated the 31st March 1848.

Hyder Ally, Appellant,

versus

Meer Banoo, Respondent.

THE respondent states that Musst. Jeebanessa sold to her husband 15 gundahs of land called zimah Awan Thakoor Chund, which he occupied till his death; that on his death-bed he verbally bequeathed the whole to her as her mohuranah, and that she took possession, but that in Chyte 1207, the appellant dug some earth out of a small piece of land adjoining her house, and threw it on the footpath, which he now uses, and she therefore considers herself dispossessed out of 3 g. 1 c. of land.

The appellant denies the sale of the land to the respondent's husband, and states that he died leaving several heirs, and that the respondent therefore could not succeed to his property in virtue of her dower, and that the earth with which he mended the road was taken out of an old cow-house, and not from the respondent's field.

The moonsiff himself proceeded to the spot and took evidence to the facts, and records his opinion that the respondent has failed to prove that she has been dispossessed of any land, but that the appellant has dug earth from the side of the road, and he therefore only decreed that the appellant should pay the costs of suit and both parties have the use of the road.

The appellant urges that, as the respondent failed to prove her claim, he ought not to be saddled with the costs, and that moreover, she has not complained that he took the earth from the side of the road, but from the field adjoining her house.

The respondent has given no proof whatever of her title to the land, but produced three witnesses to prove that the appellant had dug earth from her field: this they have altogether failed to do, and they merely prove that the road is used by both parties. The appellant therefore ought not to be compelled to pay the costs of suit; and I accordingly reverse the moonsiff's decision, and dismiss the suit. The costs both in the moonsiff's court and in appeal to be defrayed by the respondent.

THE 31ST MARCH 1849.

No. 81.

Appeal from the decision of Baboo Sathcowree Deb, Moonsiff of Bhutteeary, dated the 17th January 1849.

Mudoo Beebee, Appellant,

versus

Manik Beebee, Respondent.

THE respondent states that her husband, Mahomed Wolee, who was the son of Mahomed Hussen, gave her 3 kanees of land in his father's talook, in lieu of dower, and that on the 11th Sawun 1209, she let out 1 k. 9 g. of it to her mother-in-law, Mudoo Beebee, and his half brother, Kumer Ally, for one year, at the annual rent of rupees 5-13; that it was agreed in the kuboolecut that they should give up the land after they had cut the crop, but that they have not paid her the stipulated rent, and continue to retain possession of the land, and she therefore sues for rent and possession.

The appellant states that she and her husband were joint proprietors of the talook of which the respondent claims part as dower, and that consequently, on her husband's death half of the estate belonged exclusively to her and part also of her husband's half, and that consequently, her son, Mahomed Wolee, could not settle 3 kanees upon his wife, as the whole talook is only 5 kanees; that on her husband's death, she and Kumer Ally succeeded to the whole estate, and that owing to the importunity of the respondent they gave her 1 kanee, 9 gundahs as maintenance, which she let out to Kumer Ally, and that

she gave a farkuttee, declaring she had no further claim; that he paid the rent due to the zemeendar, and was willing to pay the balance to the respondent as her maintenance, but that she refused to take it.

In the moonsiff's opinion the respondent's claim was fully established, and he accordingly gave a decree in her favor.

In appeal the same points are urged, as in the defence, with the addition that the respondent has failed to prove her deed of settlement. The respondent has failed to produce her deed of settlement, but she has established the kubooleeut executed to her by Kumer Ally. In that the land is declared to be part of that assigned to her in lieu of dower, and it is stipulated that Kumer Ally shall give it up at the expiration of the year. The appellant has produced no evidence to her assertion that she was joint proprietor with her husband, nor any to the farkuttee alleged to have been taken; and as the kubooleut is established, the moonsiff's decision must stand. I accordingly confirm it, and dismiss the appeal.

THE 31ST MARCH 1849.

No. 81 of 1849.

Appeal from the decision of Cazee Furahutollah, Moonsiff of Bhojpoor, dated the 25th January 1849.

Prankishen Ramguttee, Appellant,

versus.

Durjoodram and others, Respondents.

THIS was an action for rupees 20, the value of 8 maunds of cotton advanced upon a bond dated the 27th Bysack 1197. The moonsiff dismissed the claim, as he considered it barred by the statute of limitations. For the reasons stated by me in No. 79, decided on the 27th March, in which Prankishen and Ramguttee were appellants, and Jeichunder and others, respondents, the case is remanded for re-trial. The appellants are entitled to the value of the stamp.

PRESENT: A. SCONCE, ESQ., ADDITIONAL JUDGE.

THE 5TH MARCH 1849.

No. 611 of 1848.

Appeal from the decree of Syud Ahmud, Moonsiff of Deeang, dated the 8th August 1848.

Zynoodeen, Ram Rutten, and Runa *alias* Bhowanee Churn, (Defendants,) Appellants,

versus

Ramnath, (Plaintiff,) Respondent.

PLAINTIFF in this case sued to recover the value of a crop of kulye, sown by him, as he alleged, on 8 kanees of land, which he declared the defendants had destroyed: and he shewed that he held an itmam pottah for the land from the noabad talookdars, Sheikh Obedoollah Khan Bahadoor and Dewan Beebee. Defendants denied both the damage complained of, and the peculiar occupancy of the plaintiff, shewing that Sheikh Obedoollah Khan and Dewan Beebee were only part proprietors of the noabad talook in question, and that they held a pottah for the same land from Zinud Allee and Akber Allee, who owned one-fourth of the talook.

The moonsiff has not been careful to bring out the facts of this case in such a shape that a satisfactory decision can be passed. He has stated in general language that he finds the plaintiff's claim proved; but he declines to try the point of right involved in the opposing claims of the different talookdars abovenamed, leaving them to take measures to settle their own disputes. Zinud Allee and Abker Allee appeared in the case, and asserted that they had entered into engagement with Government for the very land, which plaintiff declared he had rented from Sheikh Obedoollah and Dewan Beebee alone. Possibly Zinud Allee and Akber Allee, subsequent to the date of settlement, had lost their interest in the land, and as regards this suit the question of actual occupancy only had to be tried: but as it is clear that the land to which the suit relates recently formed the subject of a settlement by the revenue authorities, the determination of the date and nature of that settlement was most material to the elucidation of the facts disputed in this action.

The suit is therefore remanded for further investigation.

THE 5TH MARCH 1849.

No. 613 of 1848.

Appeal from the decree of Syud Ahmud, Moonsiff of Deeang, dated the 8th August 1848.

Zynoodeen, Ram Rutten, and Runa *alias* Bhowanee Churn, (Defendants,) Appellants,

versus

Ramnath, (Plaintiff,) Respondent.

THIS case is similar to the foregoing, and for the same reasons is remanded for further investigation.

THE 12TH MARCH 1849.

No. 7 of 1847.

Appeal from the decree of Moulvee Ashruff Allee, Principal Sudder Ameen, dated the 6th August 1847.

Ramchunder, (Plaintiff,) Appellant,

versus

Ramsoonder, Ramkant, and others, (Defendants,) Respondents.

THE plaintiff in this suit, professing to have acquired an interest in a permanently settled estate, named turuff Munohur Rae, sued to recover some land, which he alleged had been alienated from the same, together with wasilat. After hearing, the suit was dismissed by the principal sudder ameen. But I find that he has prepared his proceeding in such a form that I have no choice but to remand the case for re-trial. On the 8th April 1847, the principal sudder ameen nominally held a proceeding as required by Clauses 2 and 3, Section 10, Regulation XXVI. of 1814; but he has made no attempt to express the precise object of the action, the grounds on which it is maintained, and the point or points to be established by the parties respectively. He merely says that the parties must proceed to lodge proofs corresponding with their plaint and answer, and then details the various sorts of documentary, and in some instances it would seem of oral, evidence which he requires. I need only specify one point, the investigation of which has been overlooked. In consequence of this irregularity. The defendants claim, and indeed the plaintiff has admitted, that portion of the land sued for, purports to be lakhiraj land, and is recorded as such in the measurement records of the Government. But the principal sudder ameen has omitted to consider whether, as regards the plaintiff, the land is or is not open to resumption, what is the ostensible tenure under which it is held, and whether any portion has been resumed or is liable to be resumed on the part of Government.

Further, besides giving his reasons for disposing of the case on its merits, the principal sudder ameen seems to intimate that he dismisses the suit under the statute of limitations. Often, I am aware, it is extremely difficult to separate the grounds of a judicial officer's opinion, on a point of prescription from the grounds of his opinion upon the merits: but whatever opinion the principal sudder ameen may entertain of the plaintiff's claim being barred in this instance, he will be careful to have the point fully sifted, and so to express his opinion that it shall not be misunderstood.

THE 17TH MARCH 1849.

No. 11 of 1847.

Appeal from the decree of Moulvee Ashruff Allee, Principal Sudder Ameen, dated the 12th August 1817.

Alee Ashkur, (Defendant,) Appellant,

versus

Abdoollah and Obedoollah and others, (Plaintiffs,) Respondents.

THIS suit was instituted by Abdoollah and Obedoollah, on the 30th December 1845 (corresponding with the year 1207 Muggy,) to establish their interest in 12 kanees and 5 gundahs of land, belonging, as they said, to certain talooks and ryotee tenures of four different permanently settled estates, which land, they averred, had been held by Alee Ashkur from the year 1197 Muggy downward, without paying them rent. They further averred that Alee Ashkur originally held the land by a kubooleeut, which, being burnt, they could not produce, and that he had paid them rent at the rate of rupees 25 per annum, for the years 1193, 1194, 1195, and 1196.

The principal defendants in this case, Alee Ashkur and Abdool Wahid, (son of Alee Mahomed, brother of Alee Ashkur,) denied the granting of the kubooleeut and the payment of rent relied upon by the plaintiff, and traced their acquisition of the land to an entirely different title, and to a much earlier date than that assigned by the plaintiff, asserting that 9 kanees and 8 gundahs had been alienated in favor of Zeboonissa, (mother of Alee Ashkur and Alee Mahomed,) as far back as 1145 Muggy, while Alee Ashkur claimed k. 2-12-3, on account of a talook held by himself for twenty-seven years.

Here obviously one of the first points to be enquired into, is, whether the plaintiffs have sought the redress, which they claim within the period allowed by law? But the principal sudder ameen has passed his decree solely upon the merits of the case: he expresses no opinion whatever upon the point of prescription, and it is obvious he has been led into this error from the very imperfect and irregular form in which he drew up the roobukaree prescribed by Clauses 2 and 3, Section 10, Regulation XXVI. of 1814. The principal sud-

der ameen decreed wasilat, and ordered that Alee Ashkur and Abdool Wahid should either settle for the land or give it up. And though only Alee Ashkur has appealed against this decree, inasmuch as his nephew Abdool Wahid's share of the land is professedly held under the same title as that by which Alee Ashkur's corresponding interest was acquired, the justice of the case requires that, on the suit being remanded for re-trial, the whole matter of the plaint should be re-opened.

The suit is accordingly remanded for re-trial.

THE 19TH MARCH 1849.

No. 12 of 1847.

Appeal from the decree of Moulvee Ashruf Allee, Principal Sudder Ameen, dated the 1st September 1847.

Shib Dyal Bajpae, (Plaintiff,) Appellant,

versus

Bhooiya Ghazee, Mahomud Amee, Dewana, and Runnoo Beebee, (Defendants,) Respondents.

HAVING recently had to remand some suits for re-trial, owing to the incomplete form in which the proceedings were put before me by the lower court, I much regret that the careless consideration which the principal sudder ameen has given to this suit also, should leave me no alternative but to adopt the same course. Once before was the suit decided by the principal sudder ameen, and by the judge's decision, dated 27th May 1846, it was remitted for further investigation. On that occasion the judge particularly called the principal sudder ameen's attention to the necessity of examining and disposing of the main plea urged by the defendant—that under the law of limitation the suit was wholly barred. Nevertheless, in the decree now before me, far from disposing of this point, the principal sudder ameen does not pretend even to entertain it.

Not only upon a preliminary point of law is the principal sudder ameen's decree defective, but upon the merits of the case also much want of precision is observable. Plaintiff sued to recover and assess d. 1-9-15 of land, and he professed to present, in support of his claim, the measurement chittahs of the collector, and though the principal sudder ameen decreed in favor of the plaintiff 9 kanees, 6 gundahs, and 1 cowree of the land sued for, he gives no reason whatever for disallowing the remainder of the claim.

The suit is accordingly remanded. The principal sudder ameen will carefully consider how far the plea urged by the defendant, Dewana, that the land has been in his (or his father's) uninterrupted possession for more than twelve years preceding the institution of this action, is valid; and how far in the face of that plea plaintiff

can justify his suit. And further, should he determine to entertain the case upon its merits, he will, in his judgment, assign his reasons for rejecting whatever portion of the plaintiff's claim he may reject, as well as for admitting what he may admit.

THE 19TH MARCH 1849.

No. 13 of 1847.

Appeal from the decree of Moulvee Ashruff Allee, Principal Sudder Ameen, dated the 1*st September* 1849.

Dewan Alee, (Defendant,) Appellant,

versus

Shib Dyal Bajpae, (Plaintiff,) Respondent.

I HAVE, upon the appeal preferred by the plaintiff in this suit, recorded reasons for having remanded the case for further investigation, and no further remarks are here necessary.

THE 28TH MARCH 1849.

No. 14 of 1847.

Appeal from the decree of Moulvee Ashruff Allee, Principal Sudder Ameen, dated the 17*th September* 1847.

Bunmallee Dey, (Plaintiff,) Appellant,

versus

Akbur Alee, Buksh Alee, and others, (Defendants,) Respondents.

THE plaintiff in this case, professing to have acquired, as an itmam from a noabad talookdar, certain land belonging to a noabad talook Meer Saadutoollah, as well as some chur land, aggregating in all droons 12-6-5, at an annual rent of rupees 91-9-7, sued to quash a settlement which, to his detriment, Akbur Alee and Buksh Alee had made with Government for d. 1-8-12, which, he alleged, belonged to his itmam, and for which, in fact, their father, Karkoon, entered with him into engagements. Akbur Alee and Buksh Alee, on the other hand, resisted this claim by declaring, that the land belonged to their old hereditary talook Latooa Puran.

The principal sudder ameen considered plaintiff's claim to be untenable, and dismissed the suit; and though appellant, in one of the

most pertinent petitions of appeal which I have yet read, has argued well against the grounds of the principal sudder ameen's decision, I consider from all the circumstances of the case that I must maintain the order of the lower court. The land was noabad, and of noabad land Government notoriously is the zemindar, and it appears that Government has transferred this particular portion of its zemindaree to the proprietor of a turuf from whom plaintiff professed to have derived his itmam. Under these circumstances the principal sudder ameen held that the plaintiff's interest was quashed; and above all he considered it absurd that plaintiff should profess to hold an itmam of so much greater extent than what (d. 2-5-17-3) was shewn by recent settlement to constitute the talook Meer Saadutoollah. Now appellant maintains, and he justly maintains, that whatever interests he possessed in the land were not annihilated by its transfer from one proprietor to another, and that at any rate his ryuts, who derived their title of occupancy from himself, could not possess an interest in the land superior to his own. He further shews that the principal sudder ameen erred in supposing his itmams restricted to the lands of talook Saadutoollah, inasmuch as he in his plaint professed to have acquired the settlement of new chur land as well as of the land of this older talook. Nevertheless, for the reasons following, I think that appellant has failed to make good his case:—first, he has not filed his so-called settlement for d. 12-6-5 in 1196 M. S.; nor has he filed any settlement, or equivalent for settlement, of an earlier date, to which he assigns his first occupancy of the land in question; second, he has not given any proof from which his uninterrupted occupancy, or even occasional possession, of the itmam so defined by him may be inferred; and, third, he has given no proof that the lands sued for, fall within his assumed settlement. Appellent has filed a kubooleeut granted to him by Karkoon in 1192 M. S., for 5 gundahs hassilah land; and at the same time Karkoon stipulated he should pay rent for certain waste land (to the extent of d. 1-4,) on its becoming cultivated, but at the same time excepted the land belonging to his own old talook, or the chur land accruing thereto. Now, even if we admit the validity of this kubooleeut, though evidence to attest it has not been adduced, it is evident on the face of it that, at the time it was granted, Bunmalee and Karkoon had not agreed upon the boundaries of the lands to which they respectively had pretensions; and moreover I add, that appellant has not shewn that it embraced the lands which form the subject of this action. Two witnesses indeed say that one day in 1197 they saw Karkoon pay one rupee to Bunmalee for the rent of the years 1195 and 1196, and that on the same occasion he admitted having paid the same for 1192 and 1193; but my objection remains as before, that appellant has failed to prove not only that Karkoon acquired the lands now sued for *from* himself, but that these lands fall within a settlement made by the noabad talookdar *with* himself.

THE 29TH MARCH 1849.
No. 31 of 1848.
Appeal from the decree of Mahomed Akbur, Moonsiff of Rawoojan, dated the 31st December 1847.
Noorozeeman, (Defendant,) Appellant,
versus
Waizooddeen, (Plaintiff,) Respondent.

IN this case the plaintiff sued to recover 4 gundahs of lakhiraj land, which he had bought from Saunla Beebee in Assar 1206 M. S., and of which the defendant (appellant) Noorozeeman and others had dispossessed him. Saunla Beebee, it was his object to shew, bought the land from her brother Shamut Allee in Bysakh 1202. On the other hand the defendant Noorozeeman, this appellant, declared that Shamut Allee and Aynoodeen were brothers, that they jointly inherited the land from their father, that Shamut Allee died in 1203, Anyoodeen in Bysakh 1206, and that their mother, Shuhur Banoo, having acquired the land as heir to Aynoodeen, sold it to him in Jeit 1206.

The moonsiff found plaintiff's case to be proved and so decreed. Noorozeeman had not attempted to prove his purchase at all, and even in his appeal he says such proof was quite immaterial. Agreeing then with the moonsiff that the plaintiff (respondent) has proved both the sale of the land to Saunla Beebee in 1202, and his own purchase from that person in 1206, I see no reason to interfere with the decision which has been passed in this case.

I will only add that though it is stated by appellant that Shuhur Banoo has entered into a settlement with Government for the land on the 19th February 1847, this cannot be permitted to interfere with the execution of this decree, inasmuch, as the settlement occurred two and a half years subsequent to the institution of this suit; and Shuhur Banoo herself, in an answer filed, declared that she sold the land to Noorozeeman in 1206 M. S., that is, 1844 A. D. The appellant took notice in appeal of the value of the land being calculated as if it were rent-free instead of as resumed and assessable: but the quantity of the land is too small to make any difference in the institution stamp.

The appeal is accordingly dismissed, all costs will be charged to appellant.

THE 29TH MARCH 1849.
No. 615 of 1848.
Appeal from decree of the Moonsiff of Satkaneeah, Moulvee Mahomed Afzul, dated the 18th August 1848.
Lotuck Mug, (Defendant,) Appellant,
versus
Ramlochun and others, (Plaintiffs,) Respondents.

IN this case Ramlochun sued to recover rupees 15, which he represented that Lotuck Mug, with the assistance of the zemindar of

Mascal, had forcibly taken from him. On the other hand Lotuck alleged that he only received through the co-operation of the zemindar what a tehsildar had obliged him to pay plaintiff: and besides he asserted that plaintiff was answerable for a debt of rupees 10, (less 4 rupees paid) originally contracted by his father and uncle.

The moonsiff, in decreeing the case in favor of the plaintiff, was, I think, justified by the evidence adduced. And as the only other ground of appeal brought forward by Lotuck is, that the moonsiff did not hear all the witnesses whom he wished to have examined, I find the appeal untenable, inasmuch as appellant neglected to take the steps prescribed by the moonsiff for procuring the attendance of the witnesses alluded to.

The appeal is therefore dismissed.

THE 31ST MARCH 1849.

No. 17 of 1847.

Appeal from the decree passed by Moulvee Ashruff Allee, on the 18th November 1847.

Munsoor Allee, (Defendant,) Appellant,

versus

Sona Ghazee and Afazoodeen, (Plaintiffs,) Respondents.

THE principal sudder ameen has entirely mistaken the purport of this action. Sona Ghazee, the cultivating ryut of 17 gundahs and 2 cowries of land, complained that he was forcibly dispossessed of the same by Rumzan Allee, Munsoor Allee, and others, in the end of Assar 1205 M. S. In answer, Munsoor Allee admitted that Sona Ghazee had been the ryut of the land in question, and that it was now in his own occupancy; but he denied the force, and declared that Sona Ghazee had resigned the land voluntarily. This, then, was the sole matter at issue, plaintiff's forcible or voluntary relinquishment of the land: but the principal sudder ameen's decree, not discussing that matter, proceeds to try the right of property in the land, as between Munsoor Allee and Afazoodeen. To whomsoever the right of property belongs, and to whomsoever Sona Ghazee's rent has to be paid, in this action no more than the ryut plaintiff's right to recover the land of which he has been dispossessed, can be tried.

The suit is accordingly remanded.

ZILLAH CUTTACK.

PRESENT : M. S. GILMORE, ESQ., JUDGE.

THE 2ND MARCH 1849.

No. 7 of 1847.

Appeal from the decision of Moulvee Mahomed Farookh, Sudder Ameen of Balasore, dated the 24th August 1847.

Nurhurry Naik, (Defendant,) Appellant,

versus

Muddun Mohun Naik and Musst. Lukmee Dey, (Plaintiffs,) Respondents.

CLAIM, possession of a 10 annas 8 pie share of mouzah Barabatty, pergunnah Sunhut, and of the land styled "Poortkes," situated in the zemindarry of Jydeb Cusbah, pergunnah Dusmullung, with wasilat, and corresponding share of ancestral personal property: suit laid at rupees 555-11-1.

The plaint sets forth that, during the time of the Mahrattas, Kanoo Naik, the common ancestor of both plaintiffs and defendant, held the joint offices of cutwal and sirdar under the East India Company, in their khas mehal, or factory Barabatty, and that the said Kanoo Naik had two sons, Gangoo Naik and Bhugwan Naik, the former of whom had five sons, among whom were Narain Naik, the father of Nurhurry Naik (defendant,) Chaitun Naik, the father of Muddun Mohun, and Nitye Naik, the husband of Lukmee Dey, (plaintiffs) the other members of Gangoo Naik's family, as well as the whole of the family of Bhugwan Naik, being extinct; that on the death of Kanoo Naik, Gangoo Naik succeeded to the office of sirdar, and Bhugwan Naik to that of cutwal; and that the lands in mouzah Barabatty were conferred on Bhugwân Naik as jageer, or lakhiraj, when the country was subsequently taken possession of by the British, in consideration of the satisfactory manner in which he furnished supplies and otherwise assisted the troops; and that he acquired by gift or purchase, 1 batty, 2 mauns, 7 ghoonts of lakhiraj land in mouzah Chargacheea, current under the name of Poortkes; that in 1217 U., Bhugwan Naik died, leaving Musst. Heera Dey, his widow, and Sreemunt Naik, his adopted son, as his heirs, and that, on the death of Sreemunt, Narain Naik, Chaitun Naik, and Nitye Naik, the three sons of Gangoo Naik, assumed joint possession of the property with Musst. Heera Dey, and Musst Parbutty, the widow, of Sreemunt, both since deceased; and that the lands in question

were subsequently resumed by the revenue authorities in the name of Narain Naik, who was permitted to hold them during his life free from the payment of revenue; that on the death of Narain, Naik, Muddun Mohun (plaintiff) performed his funeral rites, and, conjointly with deceased's son, Nurhurry Naik (defendant,) transacted the business connected with the lands, but a quarrel subsequently took place between them respecting family rights, and Nurhurry took possession of the whole property, for which he executed a kubooleeut before the deputy collector, and in consequence thereof the present suit was instituted.

Defendant denies the right of plaintiffs to share the property, and states that his father, Narain Naik, separated from his brothers and went and lived with Bhugwan Naik, who vested him with the management of his property, and that, on Bhugwan's death, he performed his funeral rites, and supported his widow and adopted son, Sreemunt Naik and his wife; and that Gangoo Naik's heirs, who succeeded to their ancestor's property and supported themselves, were in no way connected with him, though he admits that, on the death of Chaitun Naik and Nitye Naik, his father acted as guardian to Muddun Mohun and Lukmee Dey, and took them to live with him, and employed Muddun Mohun in collecting the rents, &c.,

The sudder ameen, after calling for a *bywastah* from the pundit, as to the law of the case as respects the right of succession, for the reasons detailed at length in his proceedings decreed the claim of Muddun Mohun Naik, or one-half of the real and personal property and wasilat, jointly sued for by him and Musst. Lukmee Dey, and dismissed that of Lukmee Dey. And against his decision defendant appealed: but on a careful consideration of the proceedings of the lower court, I am of opinion that the decision of the sudder ameen, which is in conformity with the *bywastah* of the pundit, is perfectly correct, and I accordingly confirm it, and dismiss the appeal with costs.

THE 3RD MARCH 1849.

No. 9 of 1848.

Appeal from the decision of Tarakaunth Bidasagur, Principal Sudder Ameen of Cuttack, dated the 31*st May* 1848.

Kishen Churn Patur, (Defendant,) Appellant,

versus

Gopebundoo Rai Gooroo, (Plaintiff,) Respondent.

CLAIM, rupees 2,146, being one-half of the surplus sale proceeds of talook Aitpore, pergunnah Kodindah, which was sold by the collector for arrears of revenue. The plaintiff states that his father, Chowdree Kunai Acharge, conjointly with his brothers, possessed a number of estates, which where placed under charge of Kirpasindhoo

Patjoosee, (one of the brothers,) who, in collusion with his other brothers, on the 3rd August 1823, purchased talook Aitpore *benamee* in the name of Kishen Churn Patur, with plaintiff's father's funds, and on the same date caused the said Kishen Churn Patur to execute an *ikrarnamah*, relinquishing all claim to the estate in favor of Kasseenath Birmha, the son of the aforenamed Kirpasindhoo Patjoosee, though the estate remained recorded in the collectorate up to the date of sale in the name of Kishen Churn Patur ; he also states, that in 1824, when a suit was instituted by the brothers of Chowdhree Kunai Acharge to procure a division of their estates, his father laid claim to a share of Aitpore, stating that it had been purchased benamee by Kirpasindhoo Patjoosee and his other brothers, but the brothers denied that the talook in question belonged to them, and the suit terminated in his father's getting six-sixteenths of the other properties, Aitpore being left nominally in the possession of Kishenchurn Patur, but in reality in that of Kasseenath Birmha ; and on the death of Kirpasindhoo Patjoosee, when plaintiff was about to sue his son Kasseenath Birmha for possession of Aitpore, he compromised the matter, and not only gave him possession of an 8 annas share of it, but made over to him the title deeds, viz., the *cubalah*, or deed of sale, drawn out in the name of Kishen Churn Patur, and the *ikrarnamah* executed by him transferring the property to Kasseenath Birmha, consequently Kasseenath Birmha and himself were alone entitled to the surplus proceeds of the sale ; and as Kishen Churn Patur had made application for them to the collector, and was plotting with Kasseenath Birmha to deprive him of his share, he instituted the present suit against them.

Kasseenath Birmha did not defend the suit. Kishen Churn Pater pleaded that he purchased the estate with his own money, and caused the deed of sale, which was duly registered, to be drawn out in his own name, and likewise got possession, but that in 1835, having occasion to borrow rupees 500, he obtained the sum from Kasseenath Birmha, on the mortgage of Aitpore, the title deeds of which he also made over to him, though the estate continued in his own name in the collectorate records ; but he denied having ever executed the ikrarnamah, and further stated, that in 1248, Kasseenath Birmha's mind became affected, and on his proceeding on a pilgrimage to Hindostan, plaintiff, who is his cousin, got possession of all his property, and after his return plaintiff wishing himself to purchase the estate, allowed it to fall into arrears of revenue, and caused it to be sold, the sale proceeds remaining in deposit in his (Kishen Churn Patur's) name ; and when he petitioned the collector for payment of the same, the plaintiff fabricated the story of the *benamee* sale, but that he (defendant) was sole proprietor is quite clear from the reply of Kirpasindhoo Patjoosee and the other plaintiffs to the answer of Chowdhree Kunai Acharge, in the suit instituted in the civil court for the division of their property ; and as regards plaintiff being in

possession of the *bai cubalah* and *ikrarnamah,* he must surreptitiously have obtained possession of them, when Kasseenath Birmha proceeded on his pilgrimage; and as twenty-one years have elapsed since the decision of the suit above alluded to, and the plaintiff has not in the meantime instituted proceedings to set aside the alleged *benamee* purchase, his claim is now inadmissible under the statute of limitation.

The principal sudder ameen, on the grounds that the purchase of the property, in the name of Kishen Churn Patur was a *benamee* transaction, in consequence of which the statute of limitation did not apply; and that Kishen Churn Patur admitted that Kasseenath Birmha got possession in 1835, (though he alleged he only did so as mortgagee,) and had failed to prove that he (Kishen Patur) had purchased the property with his own funds; and likewise because both the *cubalah* and *ikrarnamah,* which were filed by the plaintiff, had been proved by the writer of them and other witnesses to have been executed by Kishen Churn Patur; decreed six-sixteenths, or a 6 annas share of the sale proceeds of Aitpore, together with a ratable portion of the costs of the suit, in favor of plaintiff, in conformity with the decree of the Sudder Dewanny Adawlut, by which a corresponding share of the rest of the family property had been allotted to him. And against this decision Kishen Churn Patur appealed.

The purchase having evidently been a *benamee* transaction, it is more than probable that some fraud was connected with it, and the estate may have been purchased with money belonging to Chowdhree Kunai Acharge, as stated by the plaintiff, but he has not clearly proved that it was so, and his claim cannot be upheld on mere suspicion; and, as stated by appellant, he should have preferred his claim within the period allowed by Regulation XIV. of 1805, after he became aware of the transaction, and he probably would have done so had not his brothers been against him, and the documents relating to the sale been in possession of Kasseenath Birmha; but his having failed to do so, is no reason why he should not claim a portion of the sale proceeds of the estate, if he was in possession at the time it was sold; and as it is manifest that Kishen Churn Patur, appellant, after executing the *ikrarnamah* had no right to the estate, which, from the date of that document, became the property of Kasseenath Birmha, who had full power to dispose of it in what manner he liked, and it appears from the oral and documentary evidence adduced on the part of the respondent, and more especially from the fact of his being in possession of the title deeds, and the silence of Kasseenath Birmha, that respondent was in possession of Aitpore at the time it was sold, he is entitled to his share of the sale proceeds, whatever that may be, whether he previously had any right to the estate or not, or whether it was bought with his father's money or not; and as he has offered no objection to the share allotted to him by the principal sudder ameen, it is hereby ordered that the decision of the lower court be affirmed, and that the appeal be dismissed with costs.

THE 28TH MARCH 1849.

No. 8 of 1847.

Appeal from the decision of Moulvee Mahomed Farookh, late Sudder Ameen of Balasore, dated the 30th August 1847.

Gopeenath Dukhin Rae and others, (Defendants,) Appellants,

versus

Anund Bullub Rae Mahasoy, (Plaintiff,) Respondent.

THIS suit was instituted to set aside the decision of the revenue authorities, declaring the right of the appellants to hold possession of mouzah Koorkorah, and its under-tenure Kureempore, as moquddums, and to procure its annexation as khulsa to the parent estate talook Randeah, pergunnah Randeah Oorghurra, with wasilat: suit laid at rupees 999.

The plaintiff stated that the defendants and their ancestors had farmed the villages on leases for different periods and at variable jummas, for which they had executed kuboolecuts since 1220 U., and when talook Rundeah came under settlement in 1842, they laid claim to them as moquddums, and first filed the village accounts attested by them as moquddums, and afterwards filed other accounts signed by them as surbarakars, and procured his (plaintiff's) mooktear, without his permission, to file a petition admitting their surbarakarry title, and when he obtained intelligence of their proceedings, and presented a petition denying either that they possessed any such title or that the mooktear had authority for making the admission, they again petitioned the settlement officer, claiming a right to hold the villages as moquddums; and having made such contradictory statements, it was evident they possessed no title either as moquddums or surbarakars; but as the deputy collector had, notwithstanding, rejected his objections, and concluded a settlement with them as moquddums, and the collector and commissioner had confirmed the same, he instituted this suit.

The defendants denied ever having executed the farming kuboolecuts, as alleged by the plaintiff, and stated that they and their ancestors had held possession of Koorkorah as mouroosee moquddums since 1065 U., when it was conferred on their ancestor, Ramchunder Jenna, together with the title of Dukhin Rae, by the maharajah of Oorissa, and that the under-tenure Kureempore, was subsequently purchased by them; and although it was true that they first claimed the right of possession as moquddums, and afterwards as surbarakars before the settlement officer, they were inveigled into doing so by the plaintiff, and when they discovered that he was endeavouring to deprive them of all title to the lands, they resolved on urging their original and genuine claim as moquddums.

The sudder ameen, on the grounds of the contradictory statement made by the defendants, as to their moquddummee and surbarakary

title, and the farming kubooleeuts filed by the plaintiff, came to the conclusion that it was quite clear that the former had no moquddummee title, but that their right to hold as surbarakars was proved by the village accounts filed with their second petition before the deputy collector, and therefore dismissed their claim as moquddums, and directed that they were to retain possession of the villages as surbarakars, receiving 12½ per cent. as *mihnutana*, or the expences of collecting the rents. And against this decision both parties appealed, the plaintiff urging (see case No. 9) that the defendants had no better right to the villages as surbarakars than they had as moquddums; and the defendants repeating their claims as moquddums. And after a careful investigation of the settlement records and the proceedings before the lower court, I am of opinion that the sudder ameen's decision, for the following reasons, is altogether wrong.

From the *farakhuttee* executed in 1183 U., by Neeladhurry Jenna, one of the former shareholders, relinquishing his rights and interests in the moquddummee tenure in favor of Radha Churn Dukhin Rae, which is sealed both by the pergunnah cazee and the zemeendar, and the *sunud*, the date of which has been partially obliterated, but appears to have been executed in 1259 U., by Joogul Kishore Rae Mahasoy, one of the former zemeendars, in the name of Nursing Jenna; also from the talpottro pottah, granted in 1211, by Kishen Pershad Rae Mahasoy to Radha Churn Dukhin Rae, the copy of Gopal Pundit's jumma-wasil-bakee papers for 1211, translated from the Mahrattah, all of which were filed before the settlement officer, and in all of them the ancestors of the appellants are styled *moquddums*; likewise from the *sunuds*, bearing dates 5th Phalgoon 1174, 5th Asar 1193, and 15th Bysack 1205, under which the ancestors of appellants as moquddums conferred various parcels of land situated in the tenure in dispute, on certain other individuals, as lakhiraj, and more especially a *hookumnamah* (the date of which is not ascertainable, the paper being fretted away,) executed by the canoongoes, gomashtah, chowdhree, and other officers of the pergunnah, *conjointly* with the moquddums, the ancestors of appellants, relinquishing from assessment 2 batties of land in mouzah Koorkorah, for the worship of Sham Rae Thakoor and the support of fakeers and bushtums, the whole of which grants were upheld by the resumption officers; as well as from the fact of the appellants having first filed accounts before the settlement officer, which purported that they held possession as moquddums, though they were subsequently tutored and inveigled to file other accounts, in which they styled themselves surbarakars; it is clearly established that they and their ancestors held possession as moquddums, for a very long period under the Mahrattahs, and that they were in possession as such at the time of settlement in 1842; for all the evidence that respondent has adduced to disprove their title is five

kubooleeuts, which though alleged to have been executed by them and their ancestors, there is every reason to suppose are fabrications. And as regards the fact of the appellants having filed the second durkhast calling themselves surbarakars, and thereby, as alleged by respondent, forfeited all title to be considered moquddums, it is not only self-evident that they were inveigled into doing so by the respondent, but that by the same reasoning his own claim breaks down; for having once admitted through his mookhtear that the appellants held possession of the villages as surbarakars, and petitioned that the settlement might be concluded with them as such, and not as moquddums, his subsequent assertion that they were only farmers, is altogether inadmissible; for although respondent denies that Doolabanund Patnaik, mooktear, had any authority to file the petition acknowledging appellant's title as surbarakars, such denial is refuted by the fact of the said mooktear having continued to conduct the respondent's case before the settlement officer, and countersigned the evidence of his witnesses, after respondent had become acquainted with his having filed the said petition. Moreover, had appellants executed the farming kubooleeuts, as alleged by respondent, he would have filed them simultaneously with his petition, or immediately afterwards, at all events he would not have delayed to do so for a whole month, and then only have produced five kubooleeuts, some on stampt and others on plain paper, before the settlement officer, as he subsequently filed two more kubooleeuts written on stampt paper before the sudder ameen, one of which was for a later period than all the rest, and must consequently have been more accessible, and if it had been really in existence, the respondent would have presented it to the settlement officer. And finally, as the first and last two kubooleeuts were written on stampt paper, it is natural to suppose that, if they were genuine, they would all have been written on similar paper, and respondent would not have made the mistake of stating in his petition that the kubooleeut executed in 1840, was for three years in place of five years. I therefore, for the reasons above stated, reverse the decision of the sudder ameen, and decree the appeal, with costs of both courts against respondent.

THE 28TH MARCH 1849.

No. 9 of 1847.

Appeal from the decision of the Sudder Ameen of Balasore, Moulvee Mahomed Farookh, dated the 30th August 1847.

Anund Bullub Rae Mahasoy, (Plaintiff,) Appellant,

versus

Gopeenath Dukhin Rae and others, (Defendants,) Respondents.

THIS appeal was instituted to set aside the decision of the sudder ameen, declaring the right of respondents to the possession of mouzah

Koorkorah and its under-tenure Kureempore, as surbarakars, and not as moquddums, as decided by the revenue authorities, the appellant alleging that they were only entitled to possession as farmers; and as the claims of the respective parties have been enquired into and the right of the respondents as moquddums established, as fully detailed in the preceding case, No. 8, it is hereby ordered that the appeal be dismissed, the decision of the sudder ameen, which was evidently irregular, having been already cancelled.

THE 29TH MARCH 1849.

No. 1 of 1848.

Appeal from the decision of Moulvee Mahomed Farookh, late Sudder Ameen of Balasore, dated the 7th December 1847.

Sheebchurn Mahapatur and Jugal Punda, (Defendants,) Appellants,

versus

Bhaig Churn Das, (Plaintiff,) Respondent.

CLAIM, rupees 426-10-8, principal and interest of a bond, bearing date 19th Sawun 1242 U.

The plaint sets forth that, on the 19th Sawun 1242 U., Sheeb Mahapatur and Joogal Punda borrowed Sicca rupees 200 from plaintiff, through the agency of (or marifut) Puddun Das, on the security of Rughoonath Putnaik, and executed the tumusook filed in court, agreeing to repay the loan in Maugh 1243 U.; and as the defendants had omitted to pay any part of the sum, plaintiff brought the present suit for its recovery.

Defendants denied that they ever borrowed any money from the plaintiff, and stated that the bond, under which he sued, was executed by them at the request of their zemindar, Jugut Narain Pershad Rai Mahasoy, in favor of Bheem Churn Das, the brother of Goburdhun Das Booya, to procure the release from sale of talook Moobarukpore, the property of the said Jugut Narain Mahasoy, which was about to be sold in execution of a decree for rupees 5,000, obtained against him by the said Goburdhun Das Booya, on condition that the defendants were to be allowed a corresponding reduction from their rents for 1243; but as Goburdhun Das Booya did not give the Mahasoy credit for the sum, and caused his estate to be sold, he told the defendants not to pay the amount of the bond, and himself allowed no remission on account of it; and when defendants demanded back the bond, Bheem Churn Das fabricated a story that it had been stolen, and Goburdhun Das Booya had caused the name of Bheem Churn Das to be altered into Bhaig Churn Das, and that of Muddun Das into Puddum Das, and had also changed the date of the bond from the 14th to the 19th Kukda, and preferred the present false suit through the plaintiff.

Notwithstanding the above palpable alterations and forgeries in the bond, which were duly brought to notice when the document was filed, the sudder ameen twice decreed the plaintiff's claim: first, under date the 25th May 1843, when the defendants appealed, and the principal sudder ameen, to whom the case was referred, returned the nuthee to the sudder ameen, with instructions that the case should have been struck off his file on the default of the plaintiff, as he had not filed his *juwab-ul-juwab* within six weeks of the date on which defendants' answer was given in, and it was in consequence struck off the file on the 11th November 1843; and the second time, on the 7th December 1847, the plaintiff having re-instituted the suit on the 7th July 1846; and, although the sudder ameen admitted in his last decree, the one at present under appeal, that the alterations in question create strong suspicion against the genuineness of the bond, he came to the conclusion that the erasures and alterations were made at the time the document was written, because the defendants made allusion to the alteration in the name of the plaintiff, before the document was filed in court by the plaintiff; and that the evidence of the witnesses cited by the defendants, which was corroborative of their statement, was not to be relied on; and decreed the claim with costs.

JUDGMENT.

The cuballah, under which respondent sued the appellants, is one of the most palpable forgeries I have ever witnessed, and it is not less clear that the two individuals, Bheekarry Mahapatur and Kishen Das, whose names are borne on the bond, have perjured themselves in deposing that it was executed by the appellants, in the name of Bhaig Churn Das, respondent; and the whole tenor of their evidence, relative to the plaintiff's lending money to the appellants, is so manifestly false that, even if the bond was a fairly written document, and exhibited none of the numerous alterations now apparent in it, it could not be admitted as proof of the respondent's claims.

The following are the alterations exhibited in the bond: the name of Bhaig Das, one of the witnesses to the original deed, has been altered into Bhaig Sahoo, and that of Bheem Churn Das, the individual, in whose favor it was executed, has been changed into Bhaig Churn Das; and the forenamed witness has evidently been made to represent the said Bhaig Churn Das; the name of Muddun Das has also been altered into Puddum Das, and the date of the bond has been changed from the 14th to the 19th Kukda 1242 U. Under these circumstances, and the appellants' witnesses having deposed before the sudder ameen that the bond was executed in conformity with the statement of appellants, it is ordered that the decision of the sudder ameen be reversed, and that the appeal be decreed, and the costs of suit in both courts be paid by respondent.

It is further ordered that charges be drawn up in a separate proceeding against the plaintiff, his witnesses, and the other parties connected with the forgery of the bond, and that they be summoned to answer to the same.

THE 29TH MARCH 1849.

No. 4 of 1848.

Appeal from the decision of Tarrakaunth Bidyasagur, Principal Sudder Ameen of Cuttack, dated 25th February 1848.

Russeek Chand Adh, (Plaintiff,) Appellant,

versus

Bhugwan Sawunt Singhar, Ramchunder Hurry Chundun, Sreeram Mitter, and others, (Defendants,) Respondents.

CLAIM, rupees 678-10-8, principal and interest of a bond bearing date 17th Maugh 1250 U.

The plaint, which was filed on the 21st January 1846, in the court of the sudder ameen at Pooree, sets forth that, on the date of the bond, Bhugwan Sawunt Singhar borrowed rupees 500 from Mohunt Ram Ruttun Das, and pledged 4 annas of his share of the estate zillah Chandpore, as security for its repayment in one year; and that he subsequently alienated his property, with the view to defraud his creditor, Mohunt Ram Ruttun Das, who, in consequence of his inability to defray the expences of a suit in court, sold the *tumsook* or bond, to plaintiff.

The defendants having failed to appear within the time fixed by the ishteharnamah, the sudder ameen held a proceeding on the 24th March 1846, directing the case to be tried *exparte*, and on the 28th *idem*, after examining four witnesses on the part of the plaintiff, who all deposed to the due execution of the bond, decreed the claim.

An appeal was then preferred against his decision to the judge, denying the claim, and setting forth that the omission of the defendants to appear in proper time before the lower court, was attributable to Sreeram Mitter's being engaged enquiring into some forged letter, transmitted to him at Pooree, purporting to have been addressed to him by Chundernath Chuttoorjeah, dissuading him from purchasing the 8 annas share of Bhugwan Sawunt Singhar's estate, but which he discovered had been fabricated by the plaintiff, whom, he further stated, had promised to withdraw his suit, &c. And the judge having referred the appeal for the opinion of the principal sudder ameen, he, with the approval of the judge, directed the case to be returned to the sudder ameen for re-investigation, in order that Sreeram Mitter's objections might be enquired into, and that the other defendants might have an opportunity of being heard, if they appeared in proper time; and subsequently on the abolition of the sudder ameen's court at Pooree, the case was transferred to the

principal sudder ameen for decision, and he, on the 28th February 1848, on the grounds that the four witnesses, who deposed to the execution of the bond before the sudder ameen, were not examined in the presence of the defendants, and only two of those four witnesses could now be found, and the plaintiff had not at any time summoned other two witnesses, whose names are borne on the bond, and the bond itself was not signed in the handwriting of Bhugwan Sawunt Singhar, but merely had his mark a "kanda" attached to it, though he is able to write, dismissed the plaintiff's claim; and against this decision he appealed.

JUDGMENT.

Since the case was first tried *exparte*, in consequence of the non-attendance of the defendants, and on their appealing the case was ordered to be re-investigated in order that Sreeram Mitter might have an opportunity of proving certain facts, stated by him to have been the cause of his neglecting to defend the suit in the first instance, and he nevertheless failed to adduce any evidence whatever, in support of those assertions, before the principal sudder ameen; and the appellant caused the attendance of two of his witnesses, who deposed to the due execution of the bond, one of whom was the writer of the document, and he caused subpœnas to be served on the other two witnesses, though they could not be found; and no objection was raised by the respondents before the principal sudder ameen, regarding the bonds not being attested in the handwriting of Bhugwan Sawunt Singhar, who, from documents filed by both parties before this court, appears to be in the habit of sometimes affixing his "kanda," mark, and sometimes writing his name, to documents executed by him; it is hereby ordered, that the decision of the principal sudder ameen be reversed, and that the appeal be decreed. The costs of all the courts to be borne by respondents.

THE 31ST MARCH 1849.

No. 8 of 1849.

Appeal from the decision of Shibpershad Singh, Moonsiff of Cuttack, dated 22nd December 1848.

Pudlab Dowrah, (Plaintiff,) Appellant,

versus

Bulram Hugarry and Soonder Rairoo, (Defendants,) Respondents.

CLAIM, rupees 150-7, the amount of an ikrarnamah, or bond, dated 13th Poos 1253, and with interest, total rupees 165, 10 annas, 10 p., 16 k.,

The plaintiff states that the defendants purchased 83 bundles of "surboolee," or red silk thread, from him, for the purpose of re-selling it, and executed the bond under which he sued, the conditions of which were, that the amount was to be paid in the course of six months, by three instalments, but that the defendants had paid no part of it.

Defendants denied either purchasing the surboolee, or executing the bond. Bulram Hugarry further stated that he never dealt in the article, and Soonder Rairoo alleged that the cause of plaintiff suing him, was that he bought some *surboollee* towards the south, or in the Madras presidency, and retailed it in this district, and plaintiff, considering that his doing so interfered with his trade, had picked various quarrels with him, which had been subject of investigation in the foujdarry court, and to revenge himself had preferred the present false suit.

The plaintiff proved his claim as far as the evidence of his witnesses was concerned. But in consequence of the defendants having concealed their real place of residence, which as represented by the plaintiff is in the Telinga Bazar at Cuttack, and stated that they resided at Kishenpore, pergunnah Bakrabad, the plaintiff, not trusting to disprove their statement by evidence, added to the words "*tufseel kistbundee*" at the bottom of the bond, the following, viz., "Bulram Hugarry and Soonder Rairoo, inhabitants of Telinga Bazar," which was immediately detected when the document was filed, and during the investigation of the suit, when the defendants raised objections regarding the writer of the bond, (who was said to be Arut Mhaintee, there having been two persons of that name, who resided at Poonda, the place indicated in the bond,) and the moonsiff questioned the vakeel of the plaintiff which of the two wrote it, he replied Boro Arut Mhaintee, and on the defendants' pointing out that he had died seven or eight years before the execution of the bond, he said that he had made the assertion without obtaining correct information from his client, and that he had since ascertained that it was written by Chota Arut Mhaintee, who was also dead, and could not be called on to verify or disprove the statement; but the moonsiff, being satisfied from the inspection of a *cut-cuballah* filed in court, bearing the genuine signature of Chota Arut Mhaintee, and the evidence of certain witnesses, that the latter document was in his handwriting, and that the bond filed by the plaintiff was not, dismissed the claim, and subsequently made over the plaintiff and his witnesses to the foujdarry court, by whom they were committed to the sessions on charges of uttering a forged deed, perjury, &c., and against the decision of the moonsiff the plaintiff appeals.

From an inspection of the original ikrarnamah filed in the court of the moonsiff, and a copy of that document, which had been previously deposited in the magistrate's court, and was filed in the case committed to the sessions, it is quite evident that alterations had been

made in both documents, by adding " Bulram Hugarry and Soonder Rairoo, inhabitants of Telinga Bazar" after the words "*tufseel kistbundee*," subsequently to the writing of them; it is also evident from a comparison of the *cut-cuballah* and other documents in the handwriting of Chota Arut Mhaintee, which I procured from the collectorate, when the forgery case was before me, with the *ikrarnamah*, that the latter document was not written by Arut Mhaintee, and that consequently it is a forgery. It is therefore ordered, that the decision of the moonsiff be affirmed, and the appeal be dismissed.

ZILLAH DACCA.

PRESENT: HENRY SWETENHAM, ESQ., JUDGE.

THE 5TH MARCH 1849.

No. 45 of 1845.

Appeal from the decision of Mahomed Idris, late Principal Sudder Ameen of Furreedpore.

Shamut Ally, on his demise, Kurreem Buksh Chowdhree, (Plaintiff,) Appellant,

versus

Mr. H. Bryce, Prannauth, Mr. G. B. Ross, on his demise, Mr. William Bennett, and from him purchaser Mr. James F. Hedger, (Defendants,) Respondents.

Vakeel of Appellant—Moulvee Ameeroddeen.

Vakeel of Mr. J. F. Hedger, Respondent—Moonshee Gokool Chunder.
Other Respondents, defaulting.

SUIT to recover rent, account the year 1249, of chur Khapoora, rupees 991-6.

Chur Khapoora was let in farm for four years, 1246 to 1249, to Prannauth, gomashtah of Mr. H. Bryce—Mr. Bryce being security. A summary suit was instituted for recovery of the rent of 1249, in which case Mr. G. B. Ross filed an answer, stating he was in possession, and that he had paid the rent sued for to Ubbhoy Churn, the plaintiff's deputy, from whom he held a receipt. On the demise of Mr. G. B. Ross, Mr. W. Bennett maintained the same defence. The summary suit was dismissed. The same defence was made in the regular suit before the principal sudder ameen. The receipt of Ubbhoy Churn was filed and evidence taken as to possession and payment of the rent. It was admitted on the part of the plaintiff that Ubbhoy Churn, plaintiff's deputy, had received the rent for 1246, 1247, and 1248. The principal sudder ameen dismissed the suit.

Plaintiff has appealed. But on perusal of the pleas in appeal and the record of the case there appear no grounds for interfering with the principal sudder ameen's decision. It is accordingly affirmed, and the appeal dismissed. Costs chargeable to appellant.

THE 6TH MARCH 1849.

No. 115 of 1848.

Appeal from the decision of Nymooddeen, Moonsiff of Lethragunge.

Tareenypershaud Raee, Asaudoollah, and Sheikh Fyzoollah, (Defendants,) Appellants,

(Kalleepershaud and seven others, Defendants, did not appeal,)

versus

Pauchoo, Coachman, (Plaintiff,) Respondent.

Vakeel of Appellants—Gour Chundur and Lukheekaunth.

Vakeel of Respondent—Anund Mohun.

SUIT to recover the value of dhan and straw, rupees 12.

On the merits of the case the moonsiff decreed rupees 7-14-6, against three of the defendants, the appellants, and dismissed the remainder of the claim.

On perusal of the pleas in appeal, and the record of the case, there appear no grounds to impugn the decision, which is accordingly affirmed: appellants chargeable with costs.

THE 6TH MARCH 1849.

No. 110 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Moonsiff of Dacca.

Musst. Lukhee Munee, widow of Gooroopershaud Chund, (Plaintiff,) Appellant,

versus

Musst. Urnnapoorna, widow of Mohadeb Gooh, (Defendant,) Respondent.

Vakeel of Appellant—Petamber Sein.

Vakeels of Respondents—Anundmohun, Lukheekaunth, and Gour Kishore.

SUIT to recover a bonded debt with interest, rupees 149-4-9½.

The moonsiff stated in his judgment that more than twelve years had elapsed from the date of the bond to the date of institution of the suit, that although two months remained from time of promise to pay till the suit was instituted after the death of Mohadeb Gooh, a long period has elapsed whilst the claim remained dormant, therefore there was violent presumption the defendant's answer was correct, and he dismissed the suit.

On perusal of the pleas in appeal, and the record of the case, it appears the suit was instituted the 25th Jeit 1234, and the bond was dated the 5th Jeit 1242, the suit was not therefore barred by the

statute of limitations. The bond was verified by one subscribing witness, who deposed to the payment of the loan specified in the bond, and another witness deposed repeated demands were made for repayment. Respondent did not deny the execution of the bond, but pleaded discharge of the debt, to prove which six witnesses were named: two attended and deposed; the four others, amongst whom the principal witness, Meer Ahmed Jaun, were not examined, and their evidence is of great importance to the case.

Under these circumstances the moonsiff's decision is reversed, and the suit remanded to the present moonsiff of Dacca in order that he may examine the respondent's remaining four witnesses, or as many of them as may be brought forward, and decide the case on its merits with reference to the above observations. Costs to be awarded on final decision.

THE 12TH MARCH 1849.

No. 116 of 1848.

Appeal from the decision of Govind Chund Bose, Moonsiff of Pullas.

Mahmoodee Sirkar *alias* Mahomed Allee, (Defendant,) Appellant,

versus

Musst. Zamina, widow of Sheikh Nuboo, (Plaintiff,) Respondent.

Vakeels of Appellant—Jugomohun and Sheeb Chunder.

Respondent, defaulting.

DEFAMATION of character, rupees 32.

Plaintiff had prosecuted defendant in the criminal court for an assault, on which occasion the cazee sentenced defendant to a fine of rupees 10, and, in default of payment, to imprisonment for fifteen days. She in this case sued him for damages, laid at 32 rupees, account of the injury she received from degradation by the assault. The moonsiff, taking all the circumstances into consideration, decreed damages 5 rupees. Defendant appealed. It was argued by his counsel that the criminal prosecution barred a civil action, but this plea is overruled by a case in some degree analogous, considered in Construction No. 1251. There appearing no grounds for interfering with the moonsiff's decision, it is hereby affirmed, and the appeal dismissed with costs.

THE 13TH MARCH 1849.

No. 196 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Moonsiff of Dacca.

Kishen Chunder Shah, (Plaintiff,) Appellant,

versus

Juggernauth Shah and Puddum Lochun Shah, (Defendants,) Respondents.

Vakeels of Appellant—Juggomohun, Lukheekaunth, and Ramtunnoo.

Vakeel of Respondent—Gour Chunder.

SUIT to recover the value of cloth, rupees 62-7, and interest 7 annas, 15 gundas,—total rupees 62-14-15.

The moonsiff dismissed the suit on the 12th July 1848: appeal was preferred on the 9th August 1848: no pleas were filed. The suit was not proceeded in for upwards of six weeks, subsequently appellant pleaded sickness for the neglect. Evidence was taken on this point, from which it appeared the neglect might have been avoided. The appeal therefore is dismissed under Act XXIX. 1841.

THE 13TH MARCH 1849.

No. 5 of 1848.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Bulram Paul and Doorga Doss Paul, (two of the Defendants,) Appellants,

(Ramkishen Paul and two others, Defendants, have not appealed,)

versus

Mahomed Arip Chowdhree, (Plaintiff,) Respondent.

Vakeel of Appellant—Gour Chunder.

Vakeel of Respondent—Nundlaul.

SUIT to recover a bonded debt, principal rupees 300, interest 293-0-8,—total Sicca rupees 593-0-8, Company's rupees 633-8.

The loan was taken by Bulram, Ramkishen, and Neelkanth: the latter is not forthcoming: Doorga Doss Paul is one of his sons. The debt was duly proved before the principal sudder ameen, who decred against Bulram and Prankishen and against the property of Neelkanth.

Appellants have urged nothing in appeal calculated to impugn the decision, which is affirmed, and the appeal dismissed. The respondent was not summoned, therefore the parties will defray their own costs in appeal.

THE 13TH MARCH 1849.

No. 167 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Moonsiff of Dacca.

Sheikh Mohun, (Plaintiff,) Appellant,

versus

Domun, Khodabuksh, and Kurreembuksh, (Defendants,) Respondents.

Vakeel of Appellant—Anundo Mohun.

Vakeel of Respondents—Rasbeharee Bose.

SUIT to recover damages for defamation, rupees 150.

Plaintiff stated defendants had maliciously accused him of opening the lock of a box and stealing therefrom rupees 120, he was tried in the criminal court and acquitted, his character was thus maligned, he sued for damages. Defendants answered they had just grounds for suspicion: plaintiff saw the money put into the box from whence it was afterwards stolen. Plaintiff bore a bad character: his house, on a former occasion, had been searched, his mother and sister had been taken to the thannah as suspicious characters, his father, named Joomun, was imprisoned in jail for theft. On the charge preferred to the criminal court by the defendants, the plaintiff's house had been searched by the constituted authorities.

The moonsiff dismissed the suit. No pleas have been urged in appeal calculated to impugn the moonsiff's decision, which is hereby affirmed, and the appeal dismissed. As respondents were not summoned, the parties to bear their own costs in appeal.

THE 13TH MARCH 1849.

No. 151 of 1848.

Appeal from the decision of Moulvee Abdoollah, late Moonsiff of Dacca.

Nundkoomar Shah, Ramnarain Shah, and Gour Neetoy Shah, sons of Choora Munee Shah, (Defendants,) Appellants,

versus

Musst. Ulung, widow of Choora Munee Shah, (Plaintiff,) Respondent.

Vakeel of Appellants—Rasbeharee.

Vakeel of Respondent—Puddumlochun.

SUIT to recover subsistence money, rupees 28-8.

Plaintiff stated her husband died, leaving property to the value of rupees 11,000: she lived with her sons, the defendants, but they treated her so badly that she was compelled to live separately: she took

one male and one female servant and lived in another house. Her sons, the defendants, promised to give her 9 rupees 8 annas *per mensem* for her maintenance, they did not pay, therefore she sued for three months' subsistence, viz. Bysack to Asar 1254.

Defendants denied having agreed to the terms specified by the plaintiff, their step-mother.

On consideration of the circumstances of the case and the means of the parties, the moonsiff decreed 9 rupees, that is to say, 1 rupee *per mensem*, to be paid by each son-in-law.

There are no grounds urged in the appeal for interference in the moonsiff's decision, it is affirmed and the appeal dismissed. Respondent not having been summoned, the parties to defray their respective costs in appeal.

THE 13TH MARCH 1849.

No. 16 of 1847.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Hurree Kishore Shah, (Defendant,) Appellant,

versus

Bindrabun Shah, (Plaintiff,) Respondent.

Vakeel of Appellant—Gholam Abas.

Vakeels of Respondent—Rammunee Bose and Anund Mohun.

To recover the amount of a bond, principal and interest, rupees 611.

The plaintiff and defendant are brothers. Defendant purchased from the plaintiff his share of lands for rupees 500. Plaintiff states the purchase was made 17th Maugh 1231, which is the date of the deed of sale, and that defendant gave him a bond executed under the same date for the amount purchase in lieu of cash. He now claims the amount of the said bond with interest. Defendant admits the purchase of the land, but denies execution of the bond, and declares he paid cash, which is stated in the deed of sale. The deed of sale and the bond were registered on the same day. The sudder ameen stated the bond was proved, and as defendant had not produced deed of sale or copy of it, although it had been frequently demanded by the court, it was unnecessary to summon the witnesses defendant had named to prove the cash payment; and he accordingly decreed the amount.

Defendant appealed. His principal pleas are, his witnesses had not been examined, or even summoned, that the deed of sale was exhibited with a court nuthee, he could not file when the suit pended in

the lower court, as it was at that time deposited with the record of another case in court, that the bond was a fabrication, he had not registered it, and the deposition of the witnesses alleged to have verified the bond were examined by commission in their own houses and not in court.

JUDGMENT.

The defendant (appellant) had named certain witnesses in the lower court to prove that he had paid cash. The cuballah, or deed of sale, not being filed, was not sufficient cause for the sudder ameen to declare it unnecessary to summon his witnesses. The investigation is incomplete, and the decision is consequently reversed. The case will be remanded to the principal sudder ameen's court, the sudder ameen's court having been abolished, in order that appellant's witnesses may be examined, and the deed of sale filed, and the alleged declaration of cash payment entered in the deed be enquired into, and that the case be decided on its merits. Costs to be awarded on the final decision. The value of the stampt paper, on which the petition of appeal is written, will be returned.

THE 15TH MARCH 1849.

No. 43 of 1847.

Appeal from the decision of Moulvee Abdoollah, late Sudder Ameen of Dacca.

Radanauth Shah, Brindabun Shah, and Ramsoonder Shah, (Plaintiffs,) Appellants,

versus

Goluck Shah, Sookhlaul Shah, and Mohunlaul Shah, (Defendants,) Respondents.

Vakeels of Appellants—Gour Chunder and Anund Mohun.

Vakeels of Respondents—Rammonee and Gholam Abas.

SUIT to recover ornaments, chattels, and cash, of the value of rupees 800.

Plaintiffs stated they were three brothers, they had a fourth brother named Kewul, they all four traded jointly on their father's capital, in cocoanut hooqa bottoms. Two of them lived at Jameerta, in thannah Sabar: the others, Ramsoonder Shah and Kewul, lived in Calcutta. Kewul died in Phalgoon 1248, leaving a widow, named Ekadishee and two minor sons. The widow carried on the business

in her husband's place. The Calcutta concern failed, the shop and house were sold, Ekadishee and her sons returned to the country. She, being the widow of the eldest brother, kept all the coin. She went to Rugonauth Shah in Calcutta; after some time Goluck Shah, the husband of Ekadishee's sister, and his two sons, the other two defendants, carried off Ekadishee, her sons, and all her property to their home. Her sons one by one died. Plaintiffs tried to take back Ekadishee and the property. Defendants would not part with either. In Aughun 1253, Ekadishee died, leaving all her property in defendants' house, valued 800 rupees, which they claimed.

Defendants, Sookhlaul and Mohunlaul, answered there was no such person known to them as Ekadishee. Their mother's sister, Kewul Shah's wife, was named Dursunee, she came from Calcutta with her two sons, and built a house at Meegoan, where she resided. Her sons died, she was greatly afflicted; defendants, her connections, paid her great attention; and out of gratitude she gave them her personal ornaments, valued at 200 rupees, which were stridhun, her own personal right: deducting 25 rupees for her shraad, she gave them the 175 rupees worth by a deed of gift, hibehnamah, which deed was duly registered, and no one can lay claim to stridhun. Except the property gifted to them, as above stated, she left nothing. Defendants maintained and clothed her, and defrayed the expense of the funeral festivities to the brahmins. Many other points of minor consideration are detailed in the defendants' answer.

Goluck Shah, defendant, answered separately, but to the same tenor.

Plaintiffs replied it was possible the widow of Kewul had an *alias* name. They denied her possessing stridhun.

The sudder ameen dismissed the claim. He observed it was not proved that Kewul's widow had 800 rupees joint property, which she left on her demise in the defendants' house. The plaintiffs' witnesses are not credible on account of their contradictory statements, no two deposed alike. The record of the case clearly establishes that the widow lived with her sons in Meerpore, in a thatched house built by herself. Until it be proved that she held joint property, and that she left it, on her death, in the hands of the defendants, or in their charge, no claim can be had against the defendants. The claim itself was contradictory. In the list of property claimed is the value of a house sold in Calcutta for rupees 185, and in their reply the plaintiffs state that money was expended in boat hire and children's maintenance. On the other hand the hibehnamah, dated 8th Phalgoon 1252, gifting her stridhun property, was duly verified.

On perusal of the petition of appeal and record of the case, there appear no grounds for interfering with the decision of the sudder ameen. It is accordingly affirmed, the appeal dimissed. Respondents were not summoned, therefore the costs of appeal will be borne by the parties respectively.

THE 15TH MARCH 1849.

No. 15 of 1847.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Joynarain Seikdar, Moheschunder Seikdar, Musst. Nuboodoorgah, widow of Sumbhoonauth, mother and guardian of Indur Chunder, Sumesur, and Bishesur, minors, Musst. Chundur Munnee, widow of Easan Chundur, mother and guardian of Sreenauth, minor, on her demise, Musst. Nuboodoorgah, Muhindur Chundur Seikdar, for self and guardian of Pursunkoomar, minor, Musst. Bijaya, widow of Gooroopershaud, Musst Rutton Munnee, widow of Giris Chunder, mother and guardian of Oopindur Chundur, and Sussee-Bhoosun, minors, Musst. Anund Mooe, widow of Easur Chundur Dutt, mother and guardian of Hur Chundur, minor, and Bhyrub Chunder Dutt, (Plaintiffs,) Appellants,

versus

Meer Hosein Allee, (Defendant,) Respondent.

Vakeel of Appellants—Gour Chundur.

Vakeel of Respondent—Petumber Sein.

SUIT to recover the profits of a farm, principal 657-2, interest 231-14-19,—total 889-0-19.

The plaintiffs stated Meer Hossein Allee, defendant, has a talooka in pergunnah Jelalpore, chuklah Surroopabad, named Oomora Beebee, purchased by Akber Hossein, sudder jumma Company's rupees 828-12-16. Defendant took from the plaintiffs a loan of 1,400 rupees, for which four bonds were executed; and defendant farmed his talooka to plaintiffs for $5\frac{1}{2}$ years from the beginning of 1247 to Assin 1252. The lease (ijarah pottah) conditioned in the distribution of assets that the profits of the farmer should be Company's rupees 119-7-12-3 *per annum*, and in the event of being dispossessed by defendant, or under any other contingencies, the defendant should be responsible to them for their amount profits. The lease was drawn out in favor of Gourreepershaud Dutt, the plaintiffs' managing gomashtah. It turned out that Mr. Dunlop opposed possession being given to plaintiffs, on the plea of the property being under-let to him by Umur Chunder Dass, farmer, (ijaradar,) to whom defendant had given a lease of date prior to that he gave to plaintiffs. In this manner plaintiffs were held out of possession. They sued for their profits with interest, according to engagement, and they filed a case of the Sudder Dewanny Adawlut, dated 29th September 1825, as a precedent.

Defendant admitted the fact stated by plaintiffs, but pleaded the usury laws, stating the profits of the ijarah increased the rate of interest on the loan beyond the legal rate, and he filed as precedent for

disposal of the suit a decision of Mr. Judge Cooke, 1st June 1837, Munneeram Sirkar, and after him Mr. J. P. Wise, plaintiff, *versus* Kishencoomar Bose and Sheeb Chunder Ghose.

The principal sudder ameen gave judgment as follows:

It is an axiom that the profits of an ijarah are merely the returns of labor, it is a *quid pro quo,* and unless the ijarahdars have possession and execute the duties of their office, they can have no claim to profits. Ijarah is only perfected by possession: it is the duty of the ijarahdar to collect and pay the zemindaree right, for which he realizes his wages of labor: the conditions between the contracting parties must be literally fulfilled. In the case under review a pottah was written, but possession was not given, therefore the claim for return for labor, when no labor was bestowed, must be held preposterous. The precedent filed by plaintiffs is not applicable. This ijarah was given for the sake of a loan. Bonds were executed for the loan, the lease was drawn out at the same time merely to increase interest. Under the provisions of Section 9, Regulation XV. 1793, plaintiffs cannot receive interest and the profits of the ijarah. The precedent filed by defendant is applicable to the case. Plaintiffs admit they have received the bonded debt with interest, the claim therefore cannot be admitted, the suit is dismissed. The plaintiffs have appealed.

From a perusal of the petition of appeal and the record of the case, it appears the principal sudder ameen has taken a wrong view of the case. The principal sudder ameen has given a definition of an ijarah tenure. I do not enter upon the merits of his views on that subject. The lease in the case under consideration is specific in its terms, and a condition is therein inserted to effect that, if respondent dispossess the appellants, or if the appellants be out of possession under any contingency, respondent rendered himself liable for the appellants' stipulated profits. The question is, can that contract now be gainsayed? The plea of usury set forth by the respondent would have been properly agitated at the time appellants sued to recover the rupees 1,400 loan under four bonds, with interest at 12 per cent. Respondent allowed that suit to go by default, principal and interest were decreed by the court. Had illegal interest through device of the ijarah then been proved, the court would have awarded no interest whatever. It does not appear that any attempt has been made by appellant to elude the rules prescribed for interest by device of the ijarah lease. When they sued for recovery of the loan with interest they did not conceal the ijarah transaction, they detailed the circumstances, which they would hardly have done had the lease been taken with the view to evade the law of interest. Under all the circumstances of the case, I reverse the principal sudder ameen's decision, and decree the profits stipulated in the lease, but not the interest sued. Interest must be paid, however, from the date of the institution of this suit to the date of realization of the amount decreed. Costs to be paid proportionally.

THE 17TH MARCH 1849.

No. 10 of 1848.

Appeal from the decision of Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Musst. Wuseemoonnissa Khatoon, Musst. Khyroonnissa Khatoon, and Musst. Roopjannoonnissa, widows of Moonshee Munneerooddeen; Musst. Humeedoonnissa Khatoon and Musst. Akturoonnissa, daughters of Moonshee Munneerooddeen; Abdool Wahed, son of Moonshee Munneerooddeen, and Ramlochun Biswas, for self and as heir of Bijnath, (Defendants,) Appellants,

(Mocheeram, Kishen Doss, and Kidder Mahomed, Defendants, did not appeal,)

versus

Wuseemooddeen, (Plaintiff,) Respondent.

Vakeels of Appellants—Gholam Abas, Ameerooddeen, Puddumlochun, Nundlaul, and Hurree Kishore.

Vakeel of Respondent—Gour Chunder.

SUIT for possession of 8 beegahs of land, jote jumma in kismut Dyarampore, included in the lands conveyed by a deed of sale (chatee putr) for rupees 640-14-11-1-1, with mesne profits 127-6-9,—total rupees 768-5-8¼-1.

Plaintiff stated, in pergunnah Haveelee, kismuts Keshubnugur and Dyarampore, &c. &c., seventeen kismuts, Ramlochun Biswas had one jote jumma,—jumma Sicca rupees 220-3-5, measuring beegahs 606,19½ cottahs in the name of his father Prawnkishen, recorded in the zumeendaree register, amongst them one kismut, named Dyarampore, contains, according to the village papers, beegahs 70, 17 cottahs, jumma rupees 48. This kismut Ram Lochun and his brother Bijnath made over in mouroosee pottah to the plaintiff, 17th Chyte 1242, for a consideration of Sicca rupees 301. Plaintiff got possession under the said pottah. On the 8th Phalgoon 1244, Ram Lochun and Bijnath borrowed from the plaintiff rupees 200, for which they executed a bond. Another talooka, kismut Seringul, to Goureepershaud Sirdar was mortgaged on conditional sale. Measures were adopted to render the sale absolute.

Ram Lochun and Bijnath, being overwhelmed with debt, sold all their rights, ryuttee, komar, junglee, hasilee &c., &c., in their jote jumma in Dyarampore. Having cancelled the meerass pottah, they sold the kismut to plaintiff for Sicca rupees 601, as follows:

Meerass pottah sulamee,	201
Bonded debt,	200
Cash,	200

They executed a chatee putr and a kharij-nameh in favor of plaintiff. The mutation of names was accordingly made in the zumeen-

daree—duol and kubooleeuts were written, and plaintiff regularly instituted in possession.

At the end of Sawun 1245, Mocheeram, Kishen Doss, and Kidder Mahomed sowed the land (the 8 beegahs under dispute) with aoos dhan, on burgah tenure, (sharing the produce.) Plaintiff claimed his share, (rajbarry.) Defendants would not give it. Thus virtually dispossessed, plaintiff brought his suit in the moonsiff's court; action laid at rupees 101. The suit was transferred for trial to the moonsiff of Bhanga, by whom it was dismissed. The case was appealed and tried by the former principal sudder ameen of Furreedpore; by that court the moonsiff's decision was reversed, and the amount decreed. Munneerooddeen and Ram Lochun made special appeal, it was admitted: the Sudder Dewanny Adawlut observed that, as Ram Lochun denied having executed the chatee putr for Company's rupees 640-14-11-1-1, its authenticity must necessarily be proved; the suit was therefore undervalued; the judge was directed to nonsuit, which was done 18th July 1846. Plaintiff therefore sued on the prescribed valuation.

Munneerooddeen defendant answered: In the jote jumma of Prawnkishen there is a kismut named Nandar, the disputed 8 beegahs are in Nandar, in possession of Mocheeram's father, Sham Kybert, a paeekhast ryut; jumma 8 Sicca rupees. In 1227 B. S. Prawnkishen made over this kismut in ijarah to defendants' father, the lease lapsed, Prawnkishen died; but his sons, Ramlochun and Brijnath renewed the lease, so that defendants' father was in possession of the disputed land 18 years, from 1227 to 1244. On the 26th Sawun 1245 Ramlochun and Bijnath sold Nandar kismut, jumma 21 rupees, to defendant for rupees 384. Mocheeram and other ryuts executed kubooleeuts and paid rents. The disputed land is not a portion of Dyarampore, possession has been undisturbed 27 years; Mocheeram and others, of the Kybert family, have cultivated the land under dispute 40 years. Ramlochun, Bijnath, Mocheeram, and others admitted the said land was in Nandar, when the suit was instituted in the moonsiff's court.

Ramlochun defendant answered thus: He gave a meerass pottah for kismut Dyarampore, to enable him to pay interest legal and illegal on a debt of rupees 201, which he borrowed the 17th Chyte 1242. It was then orally agreed that whenever the principal of the debt was repaid, the meerass pottah should be returned. The debt was not paid, when in Assar 1245 defendant solicited from plaintiff a further loan of rupees 200. Plaintiff agreed to lend the money required on condition of defendant executing a kut kubalah, or conditional sale, of the said kismut, account the former debt 201, and the new loan 200. This was done, and plaintiff agreed in presence of witnesses that, if the rupees 401 be repaid in a month, the deed of conditional sale should be restored. On the 5th Sawun 1245, plaintiff wrote an agreement to effect that he would remain in possession until 1249, by which time the loan would be recovered from the assets of the

estate, and he would then return the hereditary lease and deed of conditional sale, and return possession to defendant. Eventually a fabricated bond, bearing date the 8th Phalgoon 1244, was brought forward against defendant; and plaintiff declared defendant had sold kismut Dyarampore for rupees 601, and he sued for possession in the moonsiff's court.

Mocheeram and Kishen Doss defendants answered the disputed land is in Nandar, and not in Dyarampore. They wrote kubooleeuts for it, and paid rent to Guhany, or father of Munneerooddeen, who afterwards purchased Nandar. Defendants then paid rent to the purchaser under kubooleeut; they paid rent from 1209 until the present time. The lands of kismut Dyarampore and Nandar are intermixed (peetulgola.) When the case was under the consideration of the moonsiff of Bhanga, two chittas for 1226 and 1227 were filed. The moonsiff deputed his peshkar to make local investigation, who reported the lands included in each chitta, and the land under dispute were in kismut Nandar. Kidder Mahomed had a burga jote of one portion of the land under dispute. He is a ryut of the plaintiff, and, when the suit pended in the moonsiff's court, he said the tenure, payment in kind, he held was not the plaintiff's property.

The principal sudder ameen declared two points for adjudication:

1st. Did the plaintiff purchase, or did he take in mortgage with conditional sale and on a lease?

2nd. To which kismut does the deputed land belong, and in whose possession was it formerly?

The principal sudder ameen declared his opinion that it was an out and out purchase. Ramlochun said, in his answer, if the rupees 401 loan were repaid within a month, the kut kubalah was to be returned: the period for redemption lapsed, and the sale would become absolute. Is it then credible that plaintiff should forego his rights and agree to hold possession for five years only to realize his loan from the usufruct? An agreement to this effect has been filed; but it appears a fabrication. The plaintiff's signature seems forged, the witnesses, residents of distant places, are not credible. The deed of sale filed by the plaintiff has been proved unexceptionably. It proves an absolute and direct sale.

The objections offered by Munneerooddeen, defendant, and the moonsiff's judgment in support thereof are of no weight. The moonsiff's opinion was grounded on the chittas of 1226 and 1227. Neelkant, jureep ameen, deposed to prove these documents: his evidence refutes itself and shews it false: he stated having measured all the lands of those kismuts that year; he knew the land in dispute, and accordingly pointed out the numbers in the measurement papers; subsequently he deposed that except the disputed land he knew not any other portion of land he measured, nor could he tell to what kismuts the land surrounding the disputed land belonged. From the local investigation of the principal sudder ameen's serishtadar, Goluk Chunder, made

at the request of the defendants, and from the roedaad of the local ameen, Kummerooddeen, locally prepared in the presence of both parties, and from the maps they prepared, it appears there is a khal boundary between kismuts Dyarampore and Nandar. To the east is the former, the latter to the west, the disputed land is to the east in Dyarampore. From the kyfeeut of the zemindar, dated 29th Chyte 1248, and the chitta supplied by him, it appears the disputed land is in Dyarampore, in the possession of the plaintiff. From the evidence of the witnesses and from the inspection of the records of three courts, it is proved that plaintiff was in possession, and that the disputed land appertains to Dyarampore, therefore the principal sudder ameen decreed.

The pleas in appeal do not materially vary from the pleas advanced in the lower courts, and, after due consideration thereof, there appear no grounds to impugn the principal sudder ameen's decision: it is accordingly affirmed, and the appeal dismissed: but as respondent was not summoned, the parties will bear their own costs in appeal.

ZILLAH DINAGEPORE.

PRESENT : J. GRANT, ESQ., JUDGE.

THE 1ST MARCH 1849.

No. 116 of 1848.

Appeal from the decision of Abdool Mujeed, the Moonsiff of Beergunge, dated 19th April 1848.

Zer Mahomed, (Plaintiff,) Appellant,

versus

Joonakoo and Chandbur, (Defendants,) Respondents.

CLAIM, rupees 51-3-4, due on a bond for rupees 36, dated the 29th Sawun 1244 B. S. The defendants deny the authenticity of the document, and attribute the suit to enmity, because the defendant Chandbur objected to give false evidence in another case in which this plaintiff was concerned. The moonsiff dismissed the case on the evidence for the defendants, that for the plaintiff being discrepant, and the writer of the bond having in the first instance stated that he had no recollection of any money transaction between the parties.

It appears that the writer of the bond is a near relation of the plaintiff; and, though his memory was at fault in the first instance, he subsequently accounted for the father's name (Chandbur) being written after that of his son (Joonakoo) and over a finishing stroke of the pen. The defendants are Pullees, and it appears from the evidence that they do not marry in the months of Bhadoor, Poos, and Chyte, yet the money for Joonakoo's marriage, according to this bond, was borrowed two or three days before Bhadoor, though Jonakoo's witnesses have it that he was married in Assar, a month before the said date. The stamp for the bond is said to have been furnished by the plaintiff, but it was purchased two days before the date of the bond by Momin for a bond by himself, which is certainly a suspicious circumstance. With reference to the above I dismiss the appeal with costs.

THE 1ST MARCH 1849.

No. 125 of 1848.

Appeal from the decision of Ramnurain Rai, Moonsiff of Puteeram, dated the 15th May 1848.

Sooroopa Sircar, (Defendant,) Appellant,

versus

Teelookchunder Mundul, (Plaintiff,) Respondent.

CLAIM, rupees 57-6, due on a bond for rupees 47, dated the 28th Chyte 1252 B. S. The defendant pleads payment of rupees 43 in five

instalments. The moonsiff decreed the case on the bond, overruling the evidence for the defendant as discrepant and not supported by payment entered on the bond according to its terms. I see no reason to interfere with the moonsiff's decision, and therefore dismiss the appeal with costs.

THE 1ST MARCH 1849.

No. 133 of 1848.

Appeal from the decision of Moulvee Soojat Ally, Officiating Moonsiff of Rajarampore, dated the 2nd May 1848.

Foolkissore Mullick, (Defendant,) Appellant,

versus

Doorgapershad Tewaree, (Plaintiff,) Respondent.

CLAIM, rupees 56-1-7, vakeel's fees, with interest, according to the sum specified in a vakalutnama. The defendant pleads that the vakeel was discharged before the decision of the suit, in which he had very little trouble, and that he engaged him principally with a view to recover 50 rupees then due by him. The officiating moonsiff decreed the case, on the ground that nothing was proved by which the plaintiff could be deprived of his fee according to the vakalutnama.

The officiating moonsiff's decision is confirmed, and the appeal dismissed.

THE 3RD MARCH 1849.

No. 115 of 1848.

Appeal from the decision of Manick Chunder Shome, Additional Moonsiff of Rajarampore, &c., dated the 7th April 1848.

Birjmohun Das, (Plaintiff,) Appellant,

versus

Gunny Mundul, (Defendant,) Respondent.

PLAINTIFF sued to reverse a summary decision of the deputy collector of Dinagepore, dismissing his claim to the rent of 12 beegahs of lakhiraj land for 7 months of 1253.

The defendant denied holding land from the plaintiff, asserting that he formerly paid rent for 12 beegahs to Debychurn, and since 1253 to the oozurdar purchaser of Debychurn's land, (34 beegahs.)

The additional moonsiff dismissed the case principally on receipts and acquittances, filed by the defendant, overruling the evidence of the plaintiff's witnesses to the defendant's kubooleeut, because the deed of gift under which the plaintiff claimed was not satisfactorily established. The point for decision in the case is whether or not the kubooleeut filed by the plaintiff is genuine. The plaintiff states that he has been in possession of

the 12 beegahs since 1230, when they were made over to him by a deed of gift. He has filed three kubooleeuts, the third of which, for 1248 to 1257, is supported by measurement papers. He states that the person from whom he got the 12 beegahs had 50 beegahs, of which he got 12 by the deed of gift, Forman Sircar 4 for a tank, and Debychurn 34 by inheritance. The defendant states that his 12 beegahs are part of Debychurn's 34 beegahs, in support of which he has produced receipts and acquittances. There are no documents in the record from which it can be distinctly ascertained whether Debychurn's father originally held 50 beegahs or 34 beegahs only in the village; but an ijarah pottah, in which the 34 beegahs are mentioned as part of his land, is rather in favor of his having had 50 beegahs; and the kubooleeut filed by the plaintiff, supported by evidence, measurement papers, and the deed of gift, are, in my opinion, less liable to suspicion than the receipts and acquittances filed by the defendant. I therefore reverse the moonsiff's decision, and decree the appeal with costs.

THE 12TH MARCH 1849.

No. 23 of 1848.

Appeal from the decision of Manick Chunder Shome, Additional Moonsiff of Rajarampore, &c., dated the 12th January 1848.

Momdil and Jhepra, (Defendants,) Appellants,

versus

Belkoo, Seleem, and Toolim Bewa, (Plaintiffs,) Respondents.

CLAIM, one-third of the property, real and personal, of Koreemoolla, grandfather of Belkoo and Seleem; laid at rupees 300. The defendants state that the plaintiffs separated from them in 1244, and received their share of the property. The additional moonsiff decreed 15 beegahs, 13 c., 6 c., a portion of two jotes, on the ground that they had not been divided with the personal property, the division of which he considered established by the defendants' documents and witnesses. It appears that Koila Sircar had three sons, Babur, Manoolla, and Kureemoolla, and that his property was divided among Babur, Manoolla, and the heirs of Kureemoolla, (the plaintiffs and defendants in this suit). The plaintiffs state that the defendants turned them out in Poos 1253, without giving them their share of the property. The defendants state that the heirs of Koreemoolla did not get any portion of Koila Sircar's two jotes (158 beegahs, 5 c.,) as they were held in the names of Babur and Manoolla, and that the personal property, which they did get, was divided between them and the plaintiffs in 1244, when they separated. In support of this assertion they filed a list of property, each share being valued at rupees 33. With this document, supported by witnesses, the moonsiff was satisfied, and disallowed the

plaintiffs' claim to personal property; but two witnesses Babur and Manoolla above mentioned, having stated that, when the property of their father, Koila Sircar, was divided, the heirs of Kureemoolla, then all living together, got 47 beegahs as their share of two jotes held in the witnesses' names, the moonsiff decreed one-third, or 15 beegahs, 13 c., 6 c. The defendants' having taken out fresh pottahs when Babur and Manoolla absconded, the moonsiff did not consider any bar to the plaintiffs' claim. The case appears to me to hinge on the time when the plaintiffs and defendants separated.

If the separation did not take place until 1252, the plaintiffs are entitled to their share of all the property, and the evidence of their witnesses is clear on that point, while that of the defendants' witnesses is simply to the asserted separation and division of property in 1244, without any particulars as to the whereabouts or employment of the plaintiffs for nearly ten years. It is also to be presumed that the plaintiffs would not have lost so much time in instituting a suit, had they actually separated from the defendants in 1244 without obtaining their share of the jotes. The value of each share, according to the defendants' list, is only 33 rupees (99 in all,) while the plaintiffs' witnesses state that the joint property was worth 1,000 or 1,200 rupees. The value of the property claimed will be alluded to more particularly in the plaintiffs' appeal against this decision of the moonsiff, and in the meantime the appeal is dismissed with costs.

THE 12TH MARCH 1849.

No. 41 of 1848.

Appeal from the decision of Manick Chunder Shome, Additional Moonsiff of Rajarampore, &c. dated the 12th January 1848.

Belkoo, Seleem, and Toolim Bewa, (Plaintiffs,) Appellants,

versus

Momdil and Jhepra, (Defendants,) Respondents.

CLAIM, one-third of the property, real and personal, of Kureemoolla; laid at rupees 300. The particulars of this case are given in detail in appeal No 23 of 1848. For the reasons there given I am satisfied that the plaintiffs, on separating from the defendants, did not receive their share of the property to which they were entitled. I consider the value put on the property moderate enough with reference to the evidence of the plaintiffs' witnesses as to its aggregate value, but in the 900 rupees of which the plaintiffs claim one-third 86 rupees are on account of 86 beegahs, while it appears that the defendants hold only 62 beegahs 13¾ c. The plaintiffs can therefore only have one-third of the latter quantity and one-third of the other property claimed according to the list filed by them. On the above grounds, and to the above extent, I amend the moonsiff's decision, and decree the appeal with costs.

THE 12TH MARCH 1849.

No. 122 of 1848.

Appeal from the decision of Moolvie Mahutabooddeen, Moonsiff of Kulliagunge, dated the 24*th April* 1848.

Budee Mundul, Lalmon, and Neelmon, (Defendants,) Appellants,

versus

Toofanee Moollah, (Plaintiff,) Respondent.

CLAIM, rupees 61-4, due on a bond for rupees 49, dated the 11th Assin 1244. The defendants plead payment. The moonsiff decreed the principal (29 rupees, 2 annas) only, as he considered 13 cowries per rupee, which is a fraction above 12 per cent., illegal, overruling the evidence for the defendants to a payment of 25 rupees at a haut, because it was not entered like former payments, and it is not usual to pay debts at a haut. This asserted payment of 25 rupees is the point at issue. The defendants state that they had made large payments, the greater part of which the plaintiff took as extra interest, crediting them with only a small portion, and that in Phalgoon 1251 the plaintiff made out as due by them 15 rupees principal, and 14 rupees 2 annas interest, aggregating rupees 29-2, which was compromised for rupees 25. It is asserted that the payment was made at a haut, and that the plaintiff there promised to return the bond, but subsequently said he could not find it. They also state that they complained in the foujdaree against the plaintiff for oppression after he had become farmer of their village, and attribute the institution of this suit to that circumstance.

From the plaintiff's reply and documents filed by the defendants, the complaint in the foujdaree in Jyte 1254 having been made, is clear, and the case was instituted in Maugh 1254, some nine months afterwards. The payment entered on the bond, aggregate rupees 19 14 annas, and are up to 1247, leaving some seven years without any recorded payments. The defendants named four witnesses to the payment of 25 rupees in the haut, of whom two attended and gave very distinct evidence, but nothing in the shape of cross examination was attempted by the moonsiff, or on the part of the plaintiff; and under the circumstances of the case I see no reason to doubt their evidence. I therefore reverse the moonsiff's decision, and decree the appeal with costs.

THE 17TH MARCH 1849.

No. 26 of 1846.

Appeal from the decision of Moulvee Mahomed Khoorshed, Principal Sudder Ameen of Dinagepore, dated the 4th August 1846.

Gungabutty Chowdrain and Hurnarain Chowdhree, (Defendants,) Appellants,

versus

Genkutta Mundul, (Plaintiff,) Respondent.

CLAIM, 152 beegahs 3 c., istumraree, situated in mouzahs Buroora and Bundagong, with mesne profits. The istumraree is said to have been purchased for 1,000 rupees from Goluck Singh on the 19th Sawun 1239, and the plaintiff to have been ousted on the 9th Kartick of that year, when his measurement and collection papers were forcibly taken from him. Defendants urge that plaintiff has not stated who Goluck Singh was, or how he got an istumraree; that neither Goluck Singh nor the plaintiff ever had possession; and that the latter's papers were not taken by them.

Plaintiff, in his reply, stated that a foujdaree perwannah will prove his possession, and that Goluck Singh's grand-uncle originally obtained the istumraree.

The principal sudder ameen decreed the case, on the evidence for the plaintiff and his sunnud, supported by sundry documents including some from the magistrate's and collector's offices,—overruling the evidence and documents for the defendant, as the witnesses were their dependants and the papers were prepared by their own people.

I see no reason to interfere with the decision. The sunnud is of 1150, supported by other documents from 1198 to 1236, while the measurement papers filed by the defendants are of recent date, and were not produced for some fourteen months after they were called for. I therefore dismiss the appeal with costs.

THE 17TH MARCH 1849.

No. 27 of 1846.

Appeal from the decision of Moulvee Mahomed Khoorshed, Principal Sudder Ameen of Dinagepore, dated the 4th August 1846.

Gungabutty Chowdrain and Hurnarain Chowdhree, (Defendants,) Appellants,

versus

Genkutta Mundul, (Plaintiff,) Respondent.

CLAIM, possession of 42 beegahs 3 c., rent-free land in mouzah Buroora, purchased on the 19th Sawun 1239, from Goluck Singh, and which plaintiff was ousted from on the 9th Kartick of that year. The defendants state that neither Goluck Singh nor the plaintiff ever had possession of rent-free land in mouzah Buroora.

The principal sudder ameen decreed the case, on the documents and evidence for the plaintiff, proving that he had been in possession, and had been ousted by the defendants, who had no right to do so. The collector's opinion in respect to the land claimed as rent-free, the principal sudder ameen considered irrelevant in this case. The case is similar to appeal No. 26, between the same parties, the only difference being that this is lakhiraj, while that was for istumraree. I see no reason to interfere with the principal sudder ameen's decision, and therefore dismiss the appeal with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, ESQ., JUDGE.

THE 29TH MARCH 1849.

Case No. 130 of 1848.

Appeal from the decision of the late Moonsiff of Dwarhutta, Denonauth Bose, dated the 24th day of March 1848.

Byedanauth Mundle, (Defendant,) Appellant,

versus

Sreemunth Mangee, (Plaintiff,) Respondent.

CLAIM, for the recovery of rupees 31, annas 10, including interest, being the amount of a sum of money advanced on loan on a bond.

The appellant preferred this appeal on the 22nd day of April 1848, stating that he would subsequently file his reasons for making the appeal, but he (the appellant) neglected to do so for upwards of a period of six weeks; his appeal was therefore dismissed, under the provisions of Act XXIX. of 1841, on the 22nd day of June 1848. But, on the 22nd day of July 1848, the appellant filed a petition, stating that, owing to illness, he had been unable to attend and proceed with his case. He was then directed to prove the truth of the fact of his (the appellant's) having been ill, which he (the appellant) subsequently did, and the case was restored, on the 18th day of January 1849, to its original number on the file under Act XVI. of 1845. Nevertheless the appellant has a second time neglected to file his wojoohaut (reasons for appeal) for a period of more than six weeks. Hence I dismiss this appeal with costs, in default, under the provisions of Act XXIX. of 1841.

THE 29TH MARCH 1849.

Case No 55 of 1849.

Appeal from the decision of Baboo Russickloll Bose, the Acting Moonsiff of Rajapore, dated the 15th day of January 1849.

Ramhoree Doss, (Plaintiff,) Appellant,

versus

Gopaul Dass Ryemonee Dossee, widow of the late Gungadhur Doss, deceased, and Bykunto Doss, heir of the late Poraun Doss, deceased, (Defendants,) Respondents.

SUIT for the recovery of rupees 32, being the amount of a sum of money advanced on loan, including interest.

It appears from the papers in this case that, on the 10th day of February 1849, the appellant preferred this appeal, stating that he would subsequently file his wojoohaut, or grounds for making this appeal. More than six weeks have now elapsed, and he has not proceeded with his case: therefore I dismiss this appeal, with costs, under the provisions of Act XXIX. of 1841.

THE 31ST MARCH 1849.

Case No. 18 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 11th day of May 1848.

Ombecapersaud Roy, (Plaintiff,) Appellant,

versus

Ryekomul Daby, (Defendant,) and Gooroochurn Bose and Kishoreemohun Bose, (Claimants,) Respondents.

CLAIM, for the recovery of Company's rupees one thousand, seven hundred, and sixty-one, annas four, gundahs nine, cowree one, krant one, (Company's rupees 1,761-4-9-1-1,) advanced on loan on a mortgage bond, with interest and costs.

The plaint sets forth that the defendant, Ryekomul Daby, mortgaged her zumeendaree, consisting of six mouzahs, that is to say, lot Kamdebpore, &c., situated within this district, to the plaintiff, on the 16th day of Chyte, in the year 1252 B. S., for Company's rupees one thousand, four hundred and fifty, (Company's rupees 1450,) that is to say, in twenty-nine bank-notes, amounting in rupees to one thousand, two hundred, and eighty-five, (Company's rupees 1,285,) and in cash rupees one hundred and sixty-five (Company's rupees 165,) thus making the total sum of rupees one thousand, four hundred and fifty, (Company's rupees 1,450,) for which amount of money she (the defendant) delivered to the plaintiff a bond, which had been duly registered. The defendant having failed to liquidate the debt, the plaintiff complained against her, soliciting that the property mortgaged to him might be sold, and the sum of Company's rupees one thousand, seven hundred, and thirty-seven, annas one, gundah one, cowree one, and krant one, (Company's rupees 1,737-1-1-1-1,) be realized and paid to him from the proceeds of the sale.

The principal sudder ameen, James Reily, Esq., decreed the case *exparte,* and ordered the plaintiff to pay the costs of the claimants, on the grounds set forth in his decision.

With reference to the plea urged by the appellant, I consider it necessary that the evidence of the witness, Gooroodoss Chatterjee, the individual who wrote the bond, should be taken down. The principal sudder ameen has not assigned any reason in his decision for saddling the plaintiff with the costs incurred by the claimants. Hence I decree this appeal, and reverse the decision passed by the prin-

cipal sudder ameen, James Reily, Esq., on the 11th day of May 1848, and direct that the case be remanded to the principal sudder ameen, with instructions to restore it to its original number on his file, and to re-try the case, paying attention to the remarks pointed out in this decree.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 31st MARCH 1849.

Case No. 11 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 15*th day of February* 1848.

Thakoordoss Gosseamee, (Plaintiff,) Appellant,

versus

Radhagovind Singh, Petumber Roy, Juggesshuree Daby, Rughoonauth Roy, Gopeenauth Gossceamee, Nuronarayn Banerjee, Bhagbutt Rukheet, Casseenauth Paul, Chundeechurn Gangoolee, Goolaub Roy, Ombeekachurn Bosoo, Shamachurn Bosoo, and Brijnauth Banerjee, (Defendants,) Respondents.

CLAIM, for rupees four thousand, six hundred and eighty, seven annas and ten gundahs, (Company's rupees 4,680-7-10,) with interest, which the collector of Hooghly had deducted from the proceeds of sale on account of revenue due to the Government for the year 1252 B. S.

The papers of this case shew that, after the appellant had preferred this appeal, he filed a petition on the 6th day of March 1848, soliciting that, as it is necessary for him to institute separate suits against the late putneedars for arrears of rent, &c., in accordance with the decision passed by the principal sudder ameen, he therefore prays that this appeal may be struck off the file, and the value of the stamp on the petition of appeal be refunded to him. Therefore, with reference to the petition filed by the appellant, I dismiss the appeal; and as the respondent, Petumber Roy, has appeared unsummoned, the costs of this court are to be paid by each party respectively.

THE 31st MARCH 1849.

Case No. 25 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 29th day of July 1848.

Kallachand Banerjee, (Plaintiff,) Appellant,

versus

Sheikh Mohummud Hossein, Bordasoonderee Debea, heiress of the late Ramkomul Mookerjee, deceased, Ramcoomar Mookerjee, Mudoosoodun Mookerjee, Chundermohun Mookerjee, Ramkomul Roy, (Defendants,) and Sheik Mozuffur Hossein, (Claimant,) Respondents.

CLAIM, for the recovery of the amount of a sum of money advanced on loan on a mortgage bond, including interest, laid at the sum of Company's rupees two thousand, six hundred, and seventy-nine, annas two, gundahs six, (Company's rupees 2,679-2-6.)

It appears from the papers in this case that the defendant, Mohummud Hossein, appointed the plaintiff, Kallachand Banerjee, to be the agent for his zumeendaree, &c., that the said defendant had on several occasions borrowed on loan money from the plaintiff—making in all the total amount of rupees one thousand, three hundred and one (Co.'s rupees 1,301); for the repayment of which sum the defendant mortgaged his izarah mahaul, mouzah Kattagunge, which he held under a perpetual lease to the plaintiff, under a bond, dated the 13th day of Assar in the year 1243 B. S., on the consideration that the debt aforesaid was to be liquidated from and out of the accruing proceeds of the said farm; that in accordance with the above arrangement the plaintiff remained in possession of the property in question, and realized the amount of the rents due by the several ryuts up to the year 1245 B. S.; that in the year 1246 B. S., the defendant underlet the mahaul in dispute to an indigo planter, and having failed to repay the balance due by him with interest, the plaintiff instituted this suit.

The defendant, Ramcoomar Roy, in his answer, states that he purchased the mahaul in question in the names of his sons, Kumulchand and others, from the defendant, Mohummud Hossein, in the year 1251 B. S.; that a suit under Act IV. of 1840, having subsequently been filed in the foujdaree court by Doorgah Doss, the defendant, Ramcoomar Roy was, on appeal, directed by the sessions judge to institute a civil action regarding his rights to the property in dispute, which he (the defendant) had accordingly done; that the defendant, Mohummud Hossein, had fraudulently instigated his agent, Kallachand Banerjee, to institute this suit.

The defendant, Mohummud Hossein, in his answer, admits the demand of the plaintiff.

The claimant, Muzuffer Hossein, represents that having obtained a decree against the defendant, Mohummud Hossein, and attached the property in dispute, in execution of the said decree, he (the defendant) had fraudulently set up his agent to file this suit.

The principal sudder ameen decreed the case thus, that the plaintiff is to realize the sum of rupees two thousand, six hundred, and seventy-nine, annas two, gundahs six, (Company's rupees 2,679-2-6,) with interest and costs of suit, from the defendant, Mohummud Hossein, and that the mahaul in dispute cannot be sold, and that this decree will not be detrimental regarding the rights of other parties.

I do not see any sound reason on which to disturb the decision of the principal sudder ameen, passed on the 29th day of July 1848, therefore I dismiss this appeal with costs.

THE 31ST MARCH 1849.

Case No. 19 of 1848.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 11th day of May 1848.

Ryekomul Daby, (Defendant,) Appellant,

versus

Ombecapersaud Roy, (Plaintiff,) Respondent.

SUIT regarding a mortgaged bond, laid at Company's rupees one thousand, eight hundred and eighteen, annas twelve, (Company's rupees 1,818-12,) with interest.

The papers of this case shew that the defendant mortgaged her zemeendaree, consisting of six mouzahs, that is to say, lot Kamdebpore, &c., situated within this district, to the plaintiff, on the 16th day of Chyte in the year 1252 B. S., for the sum of Companys rupees one thousand, four hundred and fifty, (Company's rupees 1,450,) the amount being paid partly in notes and partly in cash, and for which amount the defendant gave her a bond which had been duly registered; in consequence of the defendant not liquidating the debt, plaintiff instituted a suit against her.

The principal sudder ameen, James Reily, Esq., decreed the case *exparte*, for the reasons recorded in his decision.

It is urged in appeal that the appellant did not know of the institution of the suit, which had been filed against her by the plaintiff, and that she (the defendant) had not been served with the usual notice or proclamation, which facts will be proved by the persons who acknowledged the receipt of the said process, if their deposition be taken, &c.

It is clearly necessary that the persons who acknowleged the receipt of the serving of the notice and proclamation, ought to be summoned and examined in order to set at rest the pleas offered by the

appellant. I therefore decree this appeal, and reverse the decision of the principal sudder ameen, James Reily, Esq., passed on the 11th day of May 1848, and direct that the case be remanded to the principal sudder ameen, with instructions to restore the case to its original number on his file, and re-try it with reference to the remarks offered in this decree.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, ESQ., JUDGE.

THE 6TH MARCH 1849.

Case No. 40 of 1847.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated the 26th May 1847.

Mr. H. G. French, on the part of Mr. J. C. Abbott, executor of the late Mr. A. C. Dunlop, and Mr. D. Gilmore and another, (Plaintiffs,) Appellants,

versus

Anund Chunder Mitter and Bindabun Chunder Mitter, for selves and as guardians of the minors, Bistochunder Mitter, Omesh-Chunder Mitter, and three others, (Defendants,) Respondents.

CLAIM, laid at Company's rupees 4,675-1, to obtain possession of certain lands, with mesne profits and interest.

The substance of the plaint in this case is, that the plaintiffs took in farm the rights and interests of Doorgapershad and Tarapershad, who, with one Sunkary Dossiah, held a 10 annas share in turuf Putnah, &c., pergunnah Belphooliah, and that they afterwards held the same in putnee; but that during the time of the farming lease in 1242, on the 2nd and 3rd Joist, Sunkary Dossiah, the defendant, with several others, dispossessed the plaintiffs of some 140 beegahs 10 cottahs of land in the bheel Bhouriah, which belonged to turuf Putnah, &c., and that the case was instituted against the Mitters, as they are the legal heirs and representatives of Sunkary Dossiah.

The defendants, in reply, state that bheel Bhouriah was never included in the 10 annas share of turuf Putnah; but that it always belonged to Dabeypoor, in the 6 annas share of their zemindary in pergunnah Belphooliah. The defendant Doorgapershad files a separate reply, and, though acknowledging the land in question to belong to the 10 annas share, denies the dispossession.

The second principal sudder ameen dismisses the claim of the plaintiffs, declaring the investigation of the case is barred by the law of limitations.

The plaint was made in December 1845, and throughout the papers of the case I am unable to find any proof that Doorgapershad

or Tarapershad in the previous twelve years ever held any right in bheel Bhouriah. In the year 1832, there was a dispute regarding the lands in this bheel between Hursoonder Dutt Chowdhree, husband of Sunkary Dossiah, and the zemindar of Mukeempore, and the case was settled by some amicable arrangement between the parties, and it appears, while that case was going on, that Doorgapershad and Tarapershad filed a petition of objection, and claimed the lands of the bheel as their own; but there is no proof that any part of the land at that time fell to their share; and, though the plaintiffs wish to establish their right to the lands from that time up to the time of dispossession, stated by them to be 1242 B. (1835,) the kubooleeuts of the ryuts filed by the plaintiffs, I decline to consider authentic. The ink is new while the paper has the appearance of age, and in some parts the ink has penetrated through the paper, while in others it is dark, and has the appearance of freshness, and the witnesses, who give evidence to support these kubooleeuts, differ greatly in their statements regarding the dispossession. They say that Anund Chunder Mitter cut down and carried off the rice crops, whereas the plaintiffs, in their plaint, state that Sunkary Dossiah, with the assistance of a strong body of men, dispossessed them, consequently their statements regarding possession I do not believe, and I consider therefore the case barred by the law of limitation, and dismiss the appeal.

THE 7TH MARCH 1849.

Case No. 39 of 1847.

Regular Appeal from the decision of Moulavee Mooftee Lutf Hossein, First Principal Sudder Ameen, dated the 25th May 1847.

Teetochunder Sirkar, (Plaintiff,) Appellant,

versus

Sreedhur Ghose and others, (Defendants,) Respondents.

CLAIM, laid at Company's rupees 800, to establish the amount of a jummah and to obtain the amount of profit with interest during the period of dispossession.

The plaintiff states that he held a jummah from the former talookdar of the wukf estate in this district of certain lands in mouzah Basdebpore, pergunnah Seidpore, at a yearly rent of 362 Sicca rupees, or Company's rupees 386-2-1-2, and that in consequence of the bad crops the talookdar executed a deed, remitting the difference between the Sicca and Company's rupees, amounting to rupees 24-2-1-2; and that according to the lower jumma he had always paid his rent to the former talookdar, and to the farmer under the present talookdar; and that the present talookdar dispossessed him of the lands in 1250,

and instituted summary proceedings for the recovery of the rent due at the full jumma, disregarding the deed of remission, dated 10th Aughun 1246 B., and therefore this suit was brought to establish the validity of the deed of remission, and to fix the jumma of the lands according to that deed, and to obtain the amount of profits accruing from the estate during the time that the plaintiff was dispossessed of it.

The defendants deny that the plaintiff was ever dispossessed by them, and assert that the deed of remission is a forgery.

The first principal sudder ameen dismissed the case, and says that the plaintiff does not make good his claim for remission. With the papers of the case there is a copy of a petition presented in the foujdary court, on 13th Phalgoon 1250, by the plaintiff, in which he acknowledges his jumma to be 362 Sicca rupees, and in which there is no mention of any reduction; and among the papers there is no corroboration by witnesses, or otherwise, of the validity of the document, and I find on examining it that it is given through the instrumentality of a gomashtah. This has a suspicious appearance. And with reference to the alleged dispossession I find that one of the witnesses named by the plaintiffs to prove the dispossession is also a defendant in the suit, and that another represents his residence to be in a different part of the district to that mentioned by the plaintiff. Under these circumstances I confirm the order of the lower court.

THE 7TH MARCH 1847.

Case No. 38 of 1847.

Regular Appeal from the decision of Moulavee Mooftee Lutf Hossein, First Principal Sudder Ameen, dated the 25th May 1847.

Teetochunder Sirkar, (Defendant,) Appellant,

versus

Sreedhur Ghose and Omacharan Ghose, (Plaintiffs,) Respondents.

CLAIM, laid at Company's rupees 833-15-8½, on account of balance of rent.

This case has reference to Case No. 39 above.

The talookdar of the wukf estate instituted this case for arrears of revenue due for the lands of Basdebpore held by the defendant; and the first principal sudder ameen decreed the amount with reference to the larger jumma, not admitting as valid the deed of remission. This order I consider correct, for I put no faith in the deed filed by the appellant for the reasons stated above, and I dismiss the appeal.

THE 7TH MARCH 1849.

Case No. 50 of 1847.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated the 25th June 1847.

Greedhur Sein, (Defendant,) Appellant,

versus

Mohesh Chunder Roy and Dwarknath Roy, (Plaintiffs,) and three others, (Defendants,) Respondents.

CLAIM, laid at Company's rupees 1,494-14-4, to obtain possession of a jumma, with mesne profits and interest.

This suit was instituted in July 1846, to set aside a summary award and to upset a sale of a jumma, which in consequence of the said award had been sold, and to regain possession of the jumma.

The plaint sets forth that the plaintiff's father, one Meertunjoy Roy, held an hereditary jumma in mouzah Goosepore Semakallee, pergunnah Nuldee, at a yearly rent of Co.'s rupees 345-14-11; and that it was thus entered in the records of the zemindar's cutcherry, and that for 1251, and up to Jeit 1252, the plaintiffs paid to the zemindar's gomashtah the rent, and had obtained receipts for the same, and that the zemindar had instituted a summary suit against them for the year 1251, acknowledging only the receipt of 273 rupees for that period, and that, without the plaintiffs' having received intimation of the same, their jumma was sold on 3rd Phalgoon 1252, the decree being *exparte*, and purchased by one Greedhur Sein, the mooktyar of Ramruttun Roy; and the plaintiffs state that they were dispossessed of their jumma in consequence.

The defendant Greedhur says that he purchased the jumma on his own account, and that Ramruttun Roy has no interest in it.

Ramruttun Roy acknowledges possession, and says that he got possession by purchasing half of the jumma from Koomlakant, who is the son of Radakaunt, who was a joint shareholder with the father of the plaintiffs.

The second principal sudder ameen decreed the case for the plaintiffs, stating, as his reason for so doing, that in the papers there was no proof that the summons or notice had been served on the defendants in the summary suit.

This order I consider correct, for, on examining the record of the case, I can find no evidence as to the issuing of the summons as requisite in such cases by Section 15, Regulation VII. of 1799, or of the notice enjoined by Clause 3, Section 18, Regulation VIII. of 1819. The appeal is therefore dismissed.

THE 7TH MARCH 1849.

Case No. 51 of 1847.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated the 25th June 1847.

Ramruttun Roy and two others, (Defendants,) Appellants,

versus

Moheshchunder Roy and Dwarkanath Roy, (Plaintiffs,) and Ranee Kutteeanee and three others, (Defendants,) Respondents.

CLAIM, laid at Company's rupees 1,494-14-4.

This case is connected with the one just decided, No. 50.

The appellant attempts to establish the facts stated by him in his reply in case No. 50, viz. that he is not the auction purchaser, but that he came into possession of the land by purchasing it from Koomlakant, and he produces documents in support of his assertion. But in these I put no faith. I look on the whole as forgeries, and concur in the decision of the lower court.

THE 23RD MARCH 1849.

Case No. 40 of 1846.

Regular Appeal from the decision of the First Principal Sudder Ameen, Moulavee Kuleem Khan, dated the 23rd December 1844.

Fukeerchund Ghose, and after his death, Pearee Mohun Ghose and Debnarain Ghose, (Defendants,) Appellants,

versus

Reaut Allee, and after his death, his wife, Raja Beebee, and son, Kossim Allee, and Soroop Chunder Shah, (Plaintiffs,) Respondents.

CLAIM, laid at rupees 137-8. To obtain possession of certain lands, with mesne profits.

This case was tried and decided by me on the 14th March 1848, and entered in the printed Zillah Decisions for that month; but on Debnarain making a special appeal to the Sudder Dewanny, it was ruled by that Court that my decision was not so full in details as it ought to have been. The case was therefore remanded to me to draw up my decision *de novo*, in accordance with the provisions of Act. XII of 1843.

This case was instituted in the court of the moonsiff of Lohagrah, January 1838, by the plaintiff, to recover possession of a jumma with wasilat, which he had held for some years, in the village Lorooliah, in the talook of turuf Handla Booreekalee, pergunnah Nuldee, and from which the defendants had dispossessed him in 1237 B. S. The amount of land the plaintiff states to be 13 pakees, 22 kanies, 2 rakes.

The defendants deny the dispossession, and say that the boundaries of the land given in by the plaintiff, as of the land from which he had been ousted, includes land belonging to them.

The moonsiff considered the claim proved by the plaintiff. His pottah was valid, and the dispossession proved by witnesses, and the defendants were unable to bring any documents in support of their allegation. The moonsiff, on 28th February 1839, decreed the case accordingly, and the order was appealed, and came for investigation before Beijnath Sein, the principal sudder ameen, who, in September 1841, confirmed the order of the lower court. A special appeal to the judge of the zillah was then made, who, in May 1842, reversed the decisions of both the lower courts, and ordered the case to be remanded for re-investigation, and directed that the land should be measured as stated in the defendant's pottah; and that, if any land should be found in his possession in excess of that mentioned in the pottah, the plaintiff should be put in possession of it to the extent of his claim.

The principal sudder ameen, on receiving these orders, took up the case himself, instead of forwarding it to the moonsiff's court to have the judge's order carried into effect, and directed a local investigation by an ameen, and subsequently confirmed the order of the moonsiff in the case on its first coming before him. From this order a special appeal was made to the Sudder Court by the defendants, who, on 6th June 1846, were referred to the judge of the zillah, as the order of the principal sudder ameen was to be considered as an order of a court of first instance, and thus the case came before me.

On looking over the papers of the case, I find that the principal sudder ameen, on receiving the orders of the judge, Mr. Bentall, dated May 5th 1842, viz. that the land of the defendant was to be measured, and that, if any land in excess of that detailed in his pottah was found in his possession, the plaintiff was to be put in possession to the extent of his claim, ordered a local investigation by an ameen. Three different ameens were successively appointed to perform the duty, but their several reports were objected to, and finally an amlah of the principal sudder ameen's court, named Neemchand Doss, was deputed to make the enquiry, and his papers and report were with a trifling exception allowed by both parties to be correct and just. He measured the land in the possession of the defendant, and found it to amount to 10 khadas, 13 pakees, 11 kanees, 3 rakes, 2 koorees, and in his pottah was inserted 8 khadas, 7 pakees, 29 kanees, 2 rakes, the surplus therefore being 2 khadas, 5 pakees, 22 kanees, 1 rake, 2 koorees, out of this the plaintiff was put in possession of his claim, viz. 13 pakees, 22 kanees, 2 rakes.

This order I consider fair to all parties with reference to the instructions of the judge. The ameen's papers have an appearance of truth and careful investigation about them, and only one objection regarding a small patch of land was started to the measurement. I therefore confirm the decision of the lower court, and leave the costs of appeal to the appellants.

THE 31ST MARCH 1849.

Case No. 44 of 1847.

Regular Appeal from the decision of Moulavee Muftee Lutf Hossein, First Principal Sudder Ameen, dated the 12*th June* 1847.

Gopeenath Mujoomdar, (Plaintiff,) Appellant,

versus

Muddosoodun Nundee, (Defendant,) Respondent.

CLAIM, laid at Company's rupees 398-0-6, on account of a bond debt.

This case was instituted to recover the amount of a bond debt with interest. The plaint sets forth that the defendant borrowed from the plaintiff, Company's rupees 400, on 20th Asar 1251, and gave an acknowledgment for the same, agreeing to pay the principal and interest in full, in the month of Bhadoon of the same year; but in this the defendant failed: however, in Poos 1251, he paid Company's rupees 100, in liquidation of the original debt, and the receipt of this was acknowledged on the back of the bond; and to recover the remainder the plaintiff was forced into court.

The defendant did not enter an appearance in court.

The first principal sudder ameen dismissed the case, giving as his reasons for so doing, first, that it does not appear that at the time the deed was registered the defendant was present, or that any one on his account allowed the validity of the deed; second, that the witnesses to the deed are ignorant people and unable to read or write, and that on their giving their deposition in court, they allowed that at the time of the deed being written there were present many persons who could read and write, and yet that they were not made witnesses to the deed; third, that he puts no faith in the evidence of the other two witnesses produced by the plaintiff, as being present when the bond was written, as he thinks their names would undoubtedly have been affixed to the bond had they witnessed its execution; fourth, that it does not appear that previous to this transaction the parties had any dealings with each other.

I cannot agree with the first principal sudder ameen in the opinion he has formed of this case. The bond is dated 20th Asar 1251, and it was registered 3rd July 1844, (21st Asar,) the day after its execution, and, from the remarks signed by the register, it appears that one Neemanund Chuckerbutty, a mooktyar of the defendant, was present when the document was registered, and that he allowed its authenticity. The second reason assigned by the first principal sudder ameen, I consider of little value. The third is equally weak. The fact of the witnesses being unable to read or write does not invalidate their evidence in a court of justice; and the fact of a deed being written in the presence of persons whose names were not affixed to it as

witnesses, cannot be considered as sufficient cause to doubt its authenticity. The fourth reason, unsupported by other facts, is deserving of little consideration. The deed, in my opinion, bears the appearance of truth: it is regularly registered, and witnesses give clear and straight forward evidence regarding its execution. I therefore decree the amount claimed with interest, reversing the order of the lower court; and I direct the costs of both courts to be paid by the defendant.

ZILLAH MIDNAPORE.

PRESENT : H. T. RAIKES, ESQ., JUDGE.

THE 20TH MARCH 1849.

Case No. 162 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of this Zillah, passed on the 8th July 1848.

Jyegopaul Banerjea, (Plaintiff,) Appellant,

versus

Ramkanye Gungolee, (Defendant,) Respondent.

THE plaintiff instituted this suit on a bond, dated the 29th Asseen 1253 Umlee, for rupees 336, principal, and the interest thereon. The amount of the loan is stipulated to be paid in one month from date of the bond.

The defendant pleaded that he had never borrowed the money, but had gone to plaintiff's to inform him that a sum of money was due, which he (plaintiff) had borrowed on the pledge of some jewellery, and that the holder of the pledge was about to sell the property unless the debt was liquidated. This enraged the plaintiff, and he forcibly took from him (defendant) the bond for which he now sues him.

Defendant had complained in this matter in the foujdarry court, and his case been dismissed for want of credible proof.

The principal sudder ameen thus records his opinion.—"From an attentive consideration of all the circumstances of the case, the depositions of the defendant's witnesses taken in this court, the copies of the foujdarry depositions and perusal of the foujdarry roobacaree (produced by plaintiff) dated 6th of April 1846, I am of opinion that the fact of the defendant having been forced to execute the bond, on which this suit is instituted, has been sufficiently and clearly established. First, because of the improbability of the defendant having borrowed so large an amount on so short a stipulation of repayment. Moreover, the plaintiff's witnesses have stated that the defendant furnished the stampt paper on which the bond is written; but it appears from the endorsement thereon, that the paper was purchased by Juggut Narain Dey, the plaintiff's uncle's mooktyar, and that both the plaintiff and his uncle are to this day living together. Secondly, the bond is not registered, which, considering the recent date of the alleged transaction and the large amount with reference

to the circumstances of the defendant, the plaintiff ought to have had registered, and which no doubt he would have done had he really lent the money, but which I do not believe he did. Under these circumstances, not considering the plaintiff's witnesses to be worthy of reliance, I would dismiss his claim on bond."

The plaintiff has appealed against this decision, on the grounds that the principal sudder ameen has not given any valid reasons for dismissing his claim, and praying for a reference to the record to see what has been stated by the defendant's witnesses and his own.

The point to be decided in this case was the issue selected by the defendant, namely, that the bond on which the claim was brought against him, had been taken from him by force and without his consent.

This fact the principal sudder ameen presumes has been established, and for the following reasons:—First, because it is improbable the defendant would have borrowed the money for so short a period. Moreover, the stampt paper on which the bond was engrossed was purchased by the plaintiff's uncle's mooktyar, though stated by plaintiff's witnesses to have been provided by defendant; secondly, because the plaintiff never registered the document.

To show the utter fallacy of the reasoning adopted by the principal sudder ameen in basing his decision on these presumptions, it is only necessary to refer to the facts from which they are drawn.

The first fact is, that the bond is of short date,—the presumption derived from it, that the defendant would never have borrowed money on these terms. But no reasons are given why this conclusion should be drawn from the fact; though, as such a fact is not in itself sufficient to account for the conclusion, the court drawing so strong a presumption from it, should have explained by its own reasoning how one became the consequence of the other.

Then regarding the stampt paper. It is stated by plaintiff's witnesses that the bond was engrossed on stampt paper provided by defendant, and the principal sudder ameen disbelieves this statement altogether, and draws a strong inference against the plaintiff's case, because the plaintiff's uncle's mooktyar purchased it from the vendor, and the plaintiff and his uncle are still living together. This fact may be *primâ facie* suspicious, but it was in the power of defendant to summon this mooktyar, and to allow the court to judge from his evidence whether or not this fact could form a presumption in favor of defendant's statement; and as this was not done, the circumstance of itself should not have been allowed much weight in defendant's favor.

The other fact is the non-registry of the bond, and the principal sudder ameen relies upon this as proof that the plaintiff never lent the money, because, had he done so, he would certainly have registered the document. The reasoning by which he arrives at this conclusion is this, that the amount was large with reference to the

circumstances of defendant and the transaction recent. But, in reality, these facts can prove nothing, and are quite insufficient to justify the presumption adopted by him. The registry of a deed is a voluntary act, the omission to perform this act may arise from circumstances distinct from those presumed in this case, and which in themselves do not peremptorily require its performance, though they should be shown to do so, if relied upon as grounds for a judgment. I now turn to the record, and the depositions of defendant's witnesses, which the principal sudder ameen says sufficiently and clearly establish the fact of the defendant having been forced to execute the bond. The witnesses state that they were at the plaintiff's house after the defendant had been beaten, but when he signed the bond the defendant declared he did not owe the money, which plaintiff alleged he did; that all this occurred in the most public manner, and in sight of a number of people passing to and from a haut. Against the credibility of this story is the fact, that the defendant never complained against an open outrage of this kind until more than a month after the occurrence, and the foujdarry roobacaree records that his complaint was dismissed on account of his witnesses giving a direct contradiction (regarding the date of this occurrence) to his petition and complaint in the foujdarry court. I did not refer to the depositions of the parties in the criminal court, because such depositions are not evidence unless the witnesses themselves be not forthcoming, which fact was not pleaded by the defendant. As I consider the defendant failed to prove the defence set up by himself, I reverse the order of the principal sudder ameen in this case, and decree the appeal with costs against the defendant (respondent) in both courts.

THE 29TH MARCH 1849.

Case No. 193 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of this district, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Pudma Debeeah, (Plaintiff,) Respondent.

THE decision of the principal sudder ameen contains the subject matter of the pleadings, and the judgment is recorded at some length, entering so much into details that it is necessary to give it in full. It is as follows:—" Suit to obtain the reversal of an order of the deputy collector of this district, recording the name of Rajmohun Sutputee, along with that of the plaintiff, as proprietor of talook Chuck Bhurut, to cancel a putnee bynamah, and to be maintained in her possession as formerly; plaint laid at rupees 1,871-6 annas, 10 pie. The plaintiff states that Gopeechurn Sutputee, her father-in-law, was purchaser of the talook in dispute (mehaul Chuck Bhu-

rut, comprising 5 mouzahs, sudder jumma Sicca rupees 358,8 annas,) on a kuballa, bearing date the 7th Sawun 1202 U., in the name of his two sons, Mudhoosoodun and Surbanund, (plaintiff's husband,) from one Rughoonath Roy, for the sum of rupees 791; and that he was also purchaser of another talook, namely, mehaul Barjuswa, comprising 5½ mouzahs, which he purchased in the name of his wife, Kooranee Debeeah; and that he held possession of these talooks up to his death; that after his death his two sons, Mudhoosoodun and Surbanund continued to hold ijmalee possession up to the 4th Kartick 1231, at which period they made a division of the property under a deed (hissanamah,) the plaintiff's husband, Surbanund, taking Chuck Bhurut, and his brother, Mudhoosoodun, taking Chuck Barjuswa; that in this way plaintiff's husband held possession during his lifetime, and after him the plaintiff, when in 1252, the plaintiff petitioned the collector to have her name recorded in place of her husband, as sole proprietor of the talook in question, on which Rajmohun (Mudhoosoodun's son) entered a mozahimut, and in collusion with her (plaintiff's) mookteear obtained the "namjaree" of his name along with that of the plaintiffs, in the books of the collector's office; that on the strength of Rajmohun's name having been so entered along with that of the plaintiff in the said mehaul, and finding her to be an old helpless woman, he (the said Rajmohun,) with the view of prejudicing the plaintiff's rights, gave a putnee of the mehal in dispute to one Bydenath Jana, on a putnee bynamah, dated 23rd Assar 1253; that as Rajmohun had no right so to do, the plaintiff institutes this suit in virtue of her "hissanamah" deed, to effect a reversal of the namjaree of Rajmohun's name made by the collector, to have cancelled the putnee bynamah to Bydenath Jana, and to maintain possession of her property as heretofore.

"The answer of Bydenath Jana, defendant, is to the following purport, that plaintiff and Rajmohun, after being in ijmalee possession of the talook in dispute, gave to him the putnee thereof on a deed dated the 23rd Assar 1253; and that he has held possession ever since; that the hissanamah produced by plaintiff is false, and that he (Bydenath) had abundant documents to shew the ijmalee possession of plaintiff (Rajmohun,) &c.

"The following appear to me to be the points for determination in this case:

"*First.* Whether the execution of the hissanamah produced by the plaintiff has been established, and, if so, whether under it plaintiff's husband, and after him the plaintiff, has been in *sole* possession of talook Chuck Bhurut.

"*Second.* Supposing the hissanamah to be established, was Rajmohun entitled to have his name recorded, along with that of the plaintiff, as proprietor of the talook in dispute.

"*Third.* Whether the putnee to Bydenath is a valid transaction, and is it binding on the plaintiff.

" With regard to the first point, I am of opinion that the execution of the hissanamah, dated the 4th Kartick 1231, has been fully established by the testimony of two of the subscribing witnesses to the deed, deposed in this court, and by the petition of Kumul Lochun (who is Rajmohun's nephew and *shureekdar*) presented in case No. 138 of 1847, now before me, and which is intimately connected with *this suit*, inasmuch that the decision of *that suit* and of twenty *others* will depend upon the judgment to be passed *in this*, being for rents of the talook under dispute. In this petition, that is, Kumul Lochun's petition, it is distinctly stated that the talook Chuck Bhurut belongs to the plaintiff's hissa, or portion, and which, from the documents laid before me, I have every reason to believe to be the case. Moreover, the original kuballa, dated the 7th Sawun 1202, on which the talook was purchased, was in possession of the plaintiff, by whom, through her vakeel, it has been filed in this case: this circumstance therefore is in favor of the plaintiff, and goes far to support her plea of possession. Thus much with respect to the said *hissanamah*. I will now enquire into the possession in furtherance or in carrying out the conditions thereof. With regard to which, from *the several dakhillas*, bearing the signature of the revenue officers, from *tushseel papers*, comprising several nuthees, from the puttahs of *ryuts*, and *their* admission of being *her ryuts*, filed in the suits connected *with this* now before me, and to which I have already alluded, from the implications drawn from the several durkhasts, &c., filed by the plaintiff, and from the testimony of her witnesses, I have no doubt of *sole* possession having been held by Surbanund, plaintiff's husband, and after him by the plaintiff from the time the hissanamah was made between the two brothers, Surbanund and Mudhoosoodun. It is, moreover, to be noticed that, besides the assertion made by Bydenath of Rajmohun's having been in possession, there has not been produced a single satisfactory paper or document which even so much as speaks of his having held possession of the disputed property for a single day; nor has the said Rajmohun himself attempted to prove this point, although a defendant in this case, which doubtless he would have done had he any just title to the property. One remark more before I have done with the first point selected for consideration in this suit, which is, that should it be urged that the dakhillas produced by plaintiff have been given in the names of "*Mudhoo Surbanund*," and hence how can the plaintiff be considered as *sole proprietor?* To this I would reply: true, the dakhillas bear the joint names "Mudhoo Surbanund," but that it is the custom in all collectorates as well as in zemindarees, to give dakhillas *in the names of the original holders, or the parties* by whom the land was first taken, *till* such time as those names are changed *in the regular course* by "namjaree" of others, who may *have succeeded them*, or may have *become proprietors* of their property from whatever cause; and hence the reason why the names "*Mudhoo Surbanund*" appear on the

dakhillas filed by plaintiff, her name *alone* not having been recorded owing to the objections put in by Ram Mohun, to the collector, at the time she applied to him to have her name recorded. Having now recorded my reasons for considering the first point established in favor of the plaintiff, I shall now proceed to the second question for decision.

"As regards the second point for decision, I consider that to be already disposed of in favor of the plaintiff, by the reasons set forth by me on the first, in which the execution of the hissanamah has been considered as established. Such being the case, I, of course, am of opinion that the defendant Rajmohun had *no right* to get his name recorded along with that of the plaintiff as proprietor of talook Chuck Bhurut, and that consequently it must be struck out of the "namjaree" made by the deputy collector on the 27th April 1846. From the "namjaree" file, which I have now before me, I cannot but remark that it appears the deputy collector had not given the subject sufficient consideration, when he directed the name of Rajmohun to be recorded along with that of the plaintiff, because it is shewn from his own proceedings, or roobacarree, held in the case, and from the kyfeeut furnished to him by the *mahafiz* and *hoodah mohurrir*, that *the khuzanna, or rent,* of *talook Chuck Bhurut was paid in through the plaintiff and Bacharam Doss,* (which said Bacharam Doss has deposed in this court that he is the servant of the plaintiff,) and that the khuzana of the other talook (Barjuswa) was paid in by Rajmohun alone. Now had the deputy collector reflected, he might have observed from this very circumstance that there must be some reason why the rents of these two talooks were separately paid into the collectorate. It moreover appears that, at the time plaintiff made her application to obtain the "namjaree," she filed *her kuballa and other documents,* notwithstanding which the deputy collector, *in consequence of the plaintiff's having made some delay in producing her witnesses,* although not a tittle of documentary proof either as regards payment of rents of the talook in dispute or of his possession had been adduced on the part of Rajmohun, ordered the name of the said Rajmohun to be recorded along with that of the plaintiff. This I conceive to be irregular on the part of the deputy collector, and I have therefore the less hesitation in directing Rajmohun's name to be expunged from the collector's book of mutations, as regards the talook.

"With regard to the third point, it is needless to say more than that I do not consider the transaction of the putnee to be a fair or a valid one, and that therefore it is *neither obligatory nor binding* on the plaintiff in this case. That the putnee bynamah was executed by Rajmohun and given to Bydenath, I have no doubt, nor have I any doubt as to his object in so doing, which evidently was to benefit himself, at the cost and injury of Pudma Dibeeah's (plaintiff's)

rights. Rajmohun well knew that he had no right to the talook in dispute, and therefore in giving the putnee thereof to Bydenath, he had in view (in the event of that not being disputed) the object of claiming a moiety of the same as his property. Besides, nothing can be easier accomplished than the executing a writing, (document,) giving away property not belonging to one's self; and this is exactly the case in the present instance, and I would consequently reject the putnee bynamah in question as invalid and of none effect.

" Besides the putnee bynamah, the defendant Bydenath has filed the documents enumerated below, but these, in my opinion, are of no avail to him: on the contrary, they go far to strengthen me in the belief of the extreme collusion between him and the defendant Rajmohun. It must be borne in mind that the putnee bynamah is dated the 23*rd Assar* 1253. Now it is remarkable that *only six days* after this occurrence, the ryuts of Chuck Bhurut should have petitioned the magistrate (as shewn from the copy filed,) to prevent an individual by name Rajib Lochun from making a " dunga" with them; and also that in that petition *they should have entered so minutely into a detail of all the particulars relating to the giving of the putnee to* Bydenath. For *this* detail there *certainly was no necessity*, I am *consequently satisfied* the petition was made by *Bydenath* himself in the name of the ryuts, with the view of giving strength to his alleged putnee tenure; and besides my own conviction that Bydenath must have been the author of the petition in question, there is another petition on the file (which plaintiff has filed,) presented to the magistrate by the *very ryuts* who are said to have presented the *former petition, wherein they deny ever having given it.* The gauch kubooleeut of the ryuts, which Bydenath has filed, *is to the same purport as the durkhast* presented six days after the taking of the putnee, and consequently the same observations as regards Bydenath's fraudulent attempt to secure to himself the putnee of the talook under dispute, is as applicable in this instance as it is in that of the aforesaid petition. Two dakhillas and a " *khut*," alleged to have been given to *Bydenath* by plaintiff, *only nineteen* days after the alleged giving of the putnee (11th Sawun 1253,) have been filed by *the former.* The dakhillas are in acknowledgment of rents received, and the " *khut*" being a recapitulation of the purport of the putnee to him, *with all its details* even to *the mention* of the said *putneenamah being a registered* one; but these two, in my opinion, are of no avail, and is only consistent with the rest of Bydenath's fraudulent conduct in this transaction, for it can scarce be considered probable that, such a very short time after the putnee, Bydenath could have collected sufficient assets to pay the rents shewn on the dakhillas, or that plaintiff would have granted dakhillas under *her seal,* when *she omitted to attach such seal* to the putnee bynamah, which she along

with Rajmohun is alleged to have given to Bydenath. Moreover, *the omission* of the plaintiff's seal *to the putnee deed* and the reasons assigned for such omission are *most minutely detailed* in the letter which Bydenath asserts the plaintiff wrote to her, so much so, indeed, that it is impossible to believe it could ever have been written by her: in short, Bydenath, in his anxiety to attain his object of securing the putnee, has overreached himself, and hence that which he produces as proofs in his favor, only goes to satisfy me the more of his fraudulent intent, in collusion with the defendant Rajmohun, with the view to prejudice the rights of the plaintiff. Bydenath has also filed two khuts, dated respectively the 15th and 17th Sawun 1253, stated to have been written to him by plaintiff's son-in-law (Govurdhun Putee,) the one twenty-three *days*, the *other* twenty-five *days after* the giving of the alleged putnee. These letters purport to express the satisfaction felt *by him at Bydenath's taking the putnee*, and *advising him* by *no means to give up the same;* in short these khuts go to confirm in every respect Bydenath's assertion of the putnee. Now irrespective of the want of authenticity of the "khuts" in question, is it to be believed that Govurdhun would have written the letters attributed to him, when in so doing he, to all intents and purposes, would be acting to the prejudice of the rights and interest of his son (Lutbur Puttee) the *nowasa*, or grandchild of the plaintiff? and therefore these "*khuts*" I consider as fabrications, got up with the object of giving strength to his pretensions. I have already expressed my opinion that the plaintiff never gave the putnee to Bydenath. I will now for argument sake suppose that she did so; but even then she as a *childless Hindoo woman could not*, in accordance with Hindoo law, dispose of, or alienate her husband's ancestral property without the consent of her "nowasa," or grandchild, above referred to, and therefore such an act on her part would be invalid.

"The magistrate's and sessions judge's roobacarree and darogah's report filed in this suit by Bydenath bear no reference to this case that could benefit him, nor was the plaintiff or Rajmohun a party in the foujdarry suit to which they relate. The copy of the report of Nund Kishore Sircar, the "seemanabundee" ameen, which *Bydenath* has also produced, is of no benefit *to him*, because he, as a *boundary ameen*, was deputed to *give the boundaries of the different estates* or properties, *not to declare* what "hissa," or proportion, of the profits thereof the respective parties took or were entitled to, and therefore the insertion in *his report* of this *particular matter* was made, it is more than probable, at the desire of Rajmohun, and in collusion with him.

"The three chullans bearing the authentication of the collector, dated in 1249, and filed by Bydenath, will avail him nothing, because I have already in the forepart of this judgment, stated, that Bacharam, through whom the rents had been paid, was a servant of

the plaintiff; and as regards the other two chullans, which Bydenath produces, and which appear to have been given "*marfut Rajmohun,*" I observe that one of these was given to him a *short time preceding* the "namjaree" of his name (along with the plaintiff) in talook "Chuck Bhurut," and the other *after the* "namjaree." The latter circumstance (his name having been recorded) was as a matter of course; and the former Rajmohun may have effected collusively; but under neither circumstance do these benefit Bydenath's pretensions. The defendant Bydenath has filed copies of two roobacarrees of the collector, dated respectively the 2nd April and 19th May 1847, and on which he lays *great stress,* as strengthening his plea of the putnee, but as these relate only to the payment of arrears of rent by certain parties into the collector's treasury, and to the fining of one Mudhoosoodun in the sum of 20 rupees, and *not as* to the *real rights* of "Chuck Bhurut," or shewing *whose property* it was, I do not see in what respect (further than that they shew the arrears due on the talook were paid by Bydenath as *asserted* putneedar) they can avail him, or be considered as proof that the putnee was really given to him by and under the sanction of Pudma Debeeah, the plaintiff. This is the real point at issue in this case, and without clear and most satisfactory proofs thereon, on the part of the aforenamed Bydenath, (and which there is not,) his claim to the putnee is altogether untenable. Some witnesses have deposed on the part of the defendant Bydenath, but on consideration of the documents and proofs adduced by the plaintiff, I consider them of no avail to him.

"Under the foregoing circumstances, I consider the plaintiff entitled to a decree, cancelling the "namjaree" of Rajmohun's name in the collector's books, made by the deputy collector, as per his proceedings, dated the 27th April 1846, cancelling the putnee bynamah to Bydenath Jana, dated the 23rd Assar 1253, and maintaining her in possession of talook Chuck Bhurut as heretofore held by her, and furthermore that a proceeding be sent to the collector to strike out the name of Rajmohun from the book of mutations kept in his office, as regards talook Chuck Bhurut."

The defendant Bydenath Jana alone appeals against this decision: in fact, the other defendant has never entered an appearance throughout the case. The appellant first questions the legality of the claim, asserting that it involves two distinct causes of action; one being to have the plaintiff's name registered in the collector's office as sole proprietress of the property given to him in putnee, which claim does not affect him at all; and the other to cancel a putnee lease of the talook sold to him, on the ground that the lease had been fraudulently procured without her knowledge or consent. I observe that this same point was also urged in the lower court, but no notice taken of it. It is necessary therefore to dispose of it, and I believe

the decisions of the Sudder Court noted in the margin are cases in point, and will suffice to show that the objection is untenable. The principle acted upon in those decisions appears to be this, that the property claimed being one and the same, the validity of the plaint is not affected by the number of issues in defence. In this case the plaintiff seeks to establish her right to the exclusive possession of Chuck Bhurut, which has been invaded by the fraudulent acts (she states) of the defendant: this suit was therefore legally instituted and entertained in the lower court.

No. 225 of 1843, page 108 of the Sudder Court's Decisions for 1846.
No. 374 of 1844, page 326 of ditto for 1847.

I agree with the principal sudder ameen that there is every reason to believe that the plaintiff's husband, and after his death the plaintiff herself, held exclusive possession of the property, and that her possession of the title deeds and the payment of the Government revenue confirms this belief, to say nothing of the presumption derived from the evidence of the ryots, who have all along resisted the payment of their rents to Bydenath.

I entertain a very strong opinion that the bynamah produced by Bydenath is a fraudulent deed, and that all his proceedings tending to support it are based on fraud. The document has not the plaintiff's seal, though it is shown that she was in the habit of using one in business transactions, and this is even admitted by Bydenath, who attempts to rectify the informality in his bynamah, by producing a letter from the plaintiff's son-in-law, accounting for the absence of the seal on the document in question. The witnesses, who were summoned to prove the writing of this letter, are the same who give evidence in favor of Bydenath, regarding all his alleged transactions with the plaintiff, though apparently at the same time in the confidence of those who acted for the plaintiff. As the defendant's case is backed up by evidence so suspicious, this of itself goes a great way to disprove the truth of it, and I therefore confirm the decree of the principal sudder ameen, and dismiss this appeal with all costs on the appellant.

THE 29TH MARCH 1849.

Case No. 203 of 1848.

Appeal from a decision of Mr. C. Mackay, late Principal Sudder Ameen of this district, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant.

versus

Pureekhut Mundul, (Plaintiff,) Respondent.

THIS suit was instituted to set aside a summary decision for rent passed in favor of the defendant (appellant.) The subject of plaint is thus stated by the principal sudder ameen:—"The plaintiff states

that he is ryut of talook Chuck Bhurut, mouzah Bhurut, and that he pays his rent to the proprietress thereof; but that the defendant, calling himself the putneedar of the talook in question, instituted a summary suit against him for alleged arrears before the revenue authorities, and obtained a decree; that in reality he, Bydenath, is not the putneedar, nor is plaintiff indebted to him for arrears, and therefore this suit to set aside the summary award is instituted by the now plaintiff."—" Bydenath, in his answer, states that he is the putneedar of the mehal in question, that plaintiff holds a jote within his putnee on a kubooleeut, and that being in arrears he sued him before the collector and obtained a summary award."

The principal sudder ameen then observes that—" the point for decision is, whether the summary award in favor of Bydenath was passed on due and sufficient proofs, and is he entitled to the rents demanded by him from the plaintiffs.

" By my decision of this day's date, in suit No. 97 of 1847, Pudda Dibeah, plaintiff, *versus* Rajmohun Sutputee, Bydenath Jana and others, it has been decided that the said Bydenath Jana is not the putneedar of talook Chuck Bhurut, and consequently he is not entitled to demand rents from the plaintiff; therefore the award of the revenue authorities, under Regulation VII. of 1799, was not passed on due and sufficient proofs, and must be set aside."

" This court observes that the rent was claimed on a kubooleeut stated by the defendant (appellant) to have been given by the plaintiff to him. The principal sudder ameen states that because he had on the date of his decision, [24th August 1848,] declared in another decree, that Bydenath Jana was not the putneedar of chuck Bhurut, where the plaintiff's lands are situated, therefore the decision of the revenue authories, dated the 10th December 1846, was " not passed on due and sufficient proofs, and must be set aside."

Now it is evident that the revenue authorities were not called upon to inquire whether Bydenath was the lawful holder of the putnee or not, but merely whether the plaintiff had executed and delivered the kubooleeut, filed by Bydenath, and on which he made his claim for rent.

The question therefore involved in this claim had in reality nothing to do with Bydenath's claim to hold the talook, which was mooted in a regular suit in the principal sudder ameen's court. The question to be decided by the principal sudder ameen was whether the kubooleeut had been given by the ryut as stated, and whether he had acted in conformity with his engagement. This was the subject of enquiry in the revenue court, and in the suit brought to set aside the deputy collector's decree, this point can only be more regularly and formally enquired into: that is to say, if the party bringing the regular action has any further evidence to offer, in the principal sudder ameen's court, against the kubooleeut, he is at liberty to do so, and the principal sudder ameen will record his opinion on that point,

namely, whether he considers the kubooleeut to have been executed by the ryut in favor of Bydenath, and that he has subsequently failed to act up to its provisions.

As the judgment of Mr. Mackay has been recorded on erroneous grounds, I reverse his decision, and return the case to be decided with reference to the above remarks. The appellant to receive back the fees of the appeal.

It also appears that this case was originally instituted before the town moonsiff, and erroneously brought on the file of the principal sudder ameen. I therefore direct that the case be returned for investigation as above to the town moonsiff's court.

THE 29TH MARCH 1849.

Case No. 204 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Persaud Sawont, (Plaintiff,) Respondent.

PLAINTIFF instituted this suit to set aside a decision of the deputy collector, decreeing him to pay rent to appellant for the year 1253 Umlee. The principal sudder ameen removed the case to his own court, and decided it in favor of respondent. As the grounds of this decision are the same in principle as those detailed in the abstract of the principal sudder ameen's decree in case No. 203, decided this day, the same order, there recorded, is applicable to the circumstances of this case. It is therefore ordered, that the stamp fees be returned to appellant, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 205 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Doolall Khutooa, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree passed against him for arrears of rent on account of 1253 Umlee, amounting to rupees 12-6-4.

The principal sudder ameen removed the case to his own file, and decided it in favor of the respondent.

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 206 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Bachoo Sawunt, (Plaintiff,) Respondent.

THE plaintiff sued in the moonsiff's court to set aside a summary decree, awarding payment of rupees 7-8-5, as arrears of rent on account of 1253 Umlee.

The principal sudder ameen removed this case to his own court, and decided it in favor of plaintiff (respondent.)

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 207 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Kunye Santra, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree, awarding against him the sum of rupees 7-1-5, as arrears of rent for 1253 Umlee.

The principal sudder ameen removed this suit to his own file, and decided it against appellant.

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 208 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Bukoo Hut, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree, awarding against him rupees 13-13, as arrears of rent for 1253 Umlee.

The principal sudder ameen removed this case to his own court, and decided it in favor of the respondent.

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are applicable to it. Appellant will get back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 209 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Bhurut Mytee, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree, awarding against him the sum of rupees 9-4, as arrears of rent for 1253 Umlee.

The principal sudder ameen removed this suit to his own court, and decided it in favor of the plaintiff.

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are necessary. Stamp fees to be returned, and the case referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 210 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Kashee Mytee, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree for rupees 11-3, as arrears of rent for 1252 Umlee.

The principal sudder ameen removed this case to his own file, and decided it in favor of respondent.

As this case is the same in principle as case No. 208, decided this day, the same remarks and orders are applicable to it. The stamp fees to be returned, and case referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 211 of 1848.

Appeal from the decision of Mr. C. Mackay, late Principal Sudder Ameen of this district, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Kashee Mytee, (Defendant,) Respondent.

THE plaintiff had instituted a claim for arrears of rent for the year 1254, amounting to rupees 43, 10 annas, in the collector's court, stating himself to be putneedar of Chuck Bhurut, and the defendant a jotedar on the property. The principal sudder ameen, after removing the suit to his own court under Regulation VIII. of 1831, decided the case as follows:—"Whereas a similar claim to rent *for the year* 1253, on the part of the plaintiff in this suit, and against *this very defendant*, was rejected by my decision of yesterday's date, *vide* case No. 133 of 1847, (in consequence of Bydenath Jana having been declared *not to be* the putneedar of talook Chuck Bhurut by my judgment in the suit No. 97 of 1847, in which Pudma Debeeah was plaintiff,) this action for rents for a *subsequent year* must, of necessity, be dismissed."

On turning to the principal sudder ameen's decision in case No. 133, alluded to, I find that he has dismissed Bydenath's claim for rent on precisely the same grounds as those recorded in his decree in the case of Pureekheet Mundul *versus* Bydenath Jana, taken up in appeal by me this day, and decided by an order to return the case for revision by the lower court. As this case contains the same matter for decision, the same order is passed, and the same remarks are applicable.

There appears to have been an irregularity in the proceedings of the lower court in carrying out the provisions of Regulation VIII. of 1831. The principal sudder ameen has, of his own authority, removed the case from the collector's file. This is not directed in the Regulation quoted; the 15th and 16th Sections of the enactment require the order of the judge as to the tribunal in which these cases shall be tried, the subordinate courts being required to suspend their proceedings and submit them to the judge. It also appears that the cases thus removed by the principal sudder ameen from the collector's court, and the moonsiff's, were so, on the representation of the

ryuts, that these summary suits, and regular cases instituted to set aside summary decrees, involved one and the same cause of action as the regular suit pending before the principal sudder ameen, in which Pudma Dibeeah sued Bydenath Jana and Rajmohun Sutputee, to set aside a putnee lease, &c., and the principal sudder ameen seems so to have considered them; whereas that suit had nothing to do with the exaction of rent from these parties, and did not therefore involve the same cause of action, or any matter cognizable under Regulation VIII. of 1831, (see Section 16 of that Regulation,) under the provisions of which he removed the cases; and therefore these cases should not have been connected with its trial and decision.

This case will now be referred to the town moonsiff under Section 15 of Regulation VIII. of 1831, as a case between the same parties regarding the exaction of rent for 1253 Umlee, was instituted in that court, and has been this day referred back for trial.

THE 29TH MARCH 1849.

Case No. 212 of 1848.

Appeal from the decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Kunye Santra, (Defendant,) Respondent.

THE plaintiff sued summarily in the collector's court on account of arrears of rent for 1254 Umlee, amounting to rupees 22, 3 annas.

The principal sudder ameen erroneously removed the case to his own court, and decided it in favor of respondent.

As this case is the same in principle as case No. 211, decided this day, the same orders are applicable to it. It is therefore ordered, that appellant receive back his stamp fees, and the suit be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 213 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Pureekheet Mundul, (Defendant,) Respondent.

THE plaintiff sued summarily in the collector's court, on account of rent for 1254 Umlee, amounting to 25 rupees.

The principal sudder ameen erroneously removed the case to his own court, and decided it in favor of respondent.

As this case is the same in principle as case No. 211, decided this day, the same orders are applicable to it. It is therefore ordered, that appellant receive back his stamp fees, and the suit be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 214 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Bindabun Mytee, (Defendant,) Respondent.

PLAINTIFF sued summarily in the collector's court to recover arrears of rent from 1254 Umlee, amounting to rupees 42, 12 annas, 8 pies.

The principal sudder ameen removed the case to his own court, and decided it in favor of the respondent.

As this case is the same in principle as case No. 211, decided this day, the same remarks and orders are applicable. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 215 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Doolal Khalooah, (Defendant,) Respondent.

PLAINTIFF sued summarily in the collector's court for arrears of rent on account of 1254 Umlee, amounting to rupees 56, 10 annas.

The principal sudder ameen removed this case to his own court, and decided it in favor of the respondent.

As this case is the same in principle as case No. 211, decided this day, the same remarks and orders are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 216 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Persaud Sawunt, (Defendant,) Respondent.

PLAINTIFF sued summarily in the collector's court, for arrears of rent on account of 1254 Umlee, amounting to rupees 35, 1 anna.

The principal sudder ameen removed this case to his own court, and decided it in favor of the respondent.

As this case is the same in principle as case No. 211, decided this day, the same orders and remarks are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 217 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Bachoo Sawunt, (Defendant,) Respondent.

PLAINTIFF sued summarily in the collector's court for arrears of rent on account of the year 1254 Umlee, amounting to rupees 10, 10 annas.

The principal sudder ameen removed this case to his own court, and decided it in favor of the respondent.

As this case is the same in principle as case No. 211, decided this day, the same orders and remarks are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 218 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Persaud Bhut, (Defendant,) Respondent.

PLAINTIFF sued summarily in the collector's court for arrears of rent on account of the year 1254 U., amounting to rupees 36, 9 annas.

The principal sudder ameen removed this case to his own file, and decided it in favor of respondent.

As this case is the same in principle as case No. 211, decided this day, the same orders and remarks are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 219 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 29th August 1848.

Bydenath Jana, (Plaintiff,) Appellant,

versus

Bhurut Mundul, (Defendant,) Respondent.

THE plaintiff sued summarily in the collector's court for arrears of rent on account of the year 1254 Umlee, amounting to rupees 9, 6 annas.

The principal sudder ameen removed the case to his own file, and decided it in favor of respondent.

As this case is the same in principle as case No. 211, decided this day, the same remarks and orders are applicable to it. The appellant will receive back the stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 221 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 25th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Gunesh Mundul, (Plaintiff,) Respondent.

THE plaintiff sued summarily in the collector's court, to dispute a demand for rent amounting to rupees 12, 4 annas.

The principal sudder ameen removed the case to his own court, and decided against appellant.

As this case is the same in principle as case No. 211, decided this day, the same remarks and orders are applicable to it. The appellant will receive back his stamp fees, and the case be referred to the town moonsiff for trial.

THE 29TH MARCH 1849.

Case No. 234 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of Midnapore, passed on the 24th August 1848.

Bydenath Jana, (Defendant,) Appellant,

versus

Bindabun Mytee, (Plaintiff,) Respondent.

PLAINTIFF sued in the moonsiff's court to set aside a summary decree passed against him for rupees 7-8-7, arrears of rent for 1253 Umlee.

As this case is the same in principle as case No. 203, decided this day, the same remarks and orders are applicable to it. Appellant will get back his stamp fees, and the case be referred to the town moonsiff for trial.

ZILLAH MOORSHEDABAD.

PRESENT: D. J. MONEY, ESQ., JUDGE

THE 21ST MARCH 1849.

No. 2 of 1849.

Regular Appeal from the decision of Baboo Tarakishen Haldar, Moonsiff of Jungypore.

Nilkummul Chowdhry and Deb Dut Chowdhree, (Plaintiffs,) Appellants,

versus

Pran Mundul, (Defendant,) Respondent.

CLAIM, for a bond debt, amounting, with interest, to rupees 133-6-3.

An appeal was preferred from the *first* decision of the moonsiff of Jungypore, in this case, to the late judge, who decreed the appeal, (See. No. 67 of 1847, decided on the 21st July 1848,) and remanded the case for re-trial.

The moonsiff on re-trial passed the same decision again.

The late judge considered the investigation of the moonsiff incomplete, and one of the chief grounds on which he admitted the appeal and returned the case for re-trial was, that the daily account-book filed by the plaintiff, Deb Dut Chowdhree, was not *proved* to be in his handwriting. In order to prove this, the moonsiff called upon the plaintiff Deb Dut Chowdhree to appear in his court. Deb Dut did not appear, and the only evidence taken to establish his handwriting in the account-book was the deposition of his gomashta, which alone, in the absence of Deb Dut, was not sufficient. The plaintiff Nilkummul stated that Deb Dut had gone on a pilgrimage. In pursuance of the late judge's instructions, further evidence on this point appears to me to be necessary with reference to the handwriting of the different entries in the daily account-book, especially as the bond has been sworn to by the witnesses to the execution of it. I therefore admit the appeal, and return the case again to the moonsiff for re-trial, and that he may take such evidence on this point as the parties can adduce.

The value of the stamp on the petition of appeal to be returned to the appellant.

The 18th March 1849.

No. 32 of 1849.

Regular Appeal from the decision of Baboo Tarakishen Haldar, Moonsiff of Jungypore.

Khosal Mundul, Jhurro Mundul, Kokaram Mundul, Punchanund Mundul, and Gunput Mundul, (Defendants,) Appellants,

versus

Deb Dut Treevidee, (Plaintiff) Respondent.

Claim, for a bond debt, amounting to Company's rupees	53	0	0
Interest, ...	9	0	9
Total,...	62	0	9

Instituted 30th August 1848, and decided 18th February 1849.

According to the plaintiff's shewing, the defendants, including Meheloll Mundul and Roy Singh Mundul, who have not appealed to this court, borrowed from him the principal sum rupees 53, and executed a bond to that amount on the 14th Chyte 1253 B. S.; but, failing to liquidate the debt, he sued against them for the principal, with interest, amounting to rupees 62-0-9.

The defendants denied the debt, and put in a plea that Meheloll Mundul was a minor, and that there was no person of the name of Roy Singh Mundul residing in their village, and that therefore the bond was a surreptitious one, and the return to the notice issued against Roy Singh Mundul was false.

The moonsiff, considering the evidence adduced by the plaintiff sufficient to establish his claim, and the pleas of the defendants not proved, gave a decree in favor of the plaintiff for the principal amount of the debt, disallowing the demand of interest as illegal under the provisions of Section 8, Regulation XX. of 1793.

The defendants appealed from his decision, on the ground that a local enquiry had not been made, which would have established the truth of their pleas regarding the minority of Meheloll Mundul and the non-residence of Roy Singh Mundul.

The plea regarding Roy Singh Mundul is inadmissible, but the other point, the minority of Meheloll, was not sufficiently considered. The investigation of the moonsiff on this point only is wanting, which is a material one. The fact should be established one way or the other by local enquiry or further evidence. I therefore admit the appeal, and return the case for re-trial.

THE 29TH MARCH 1849.

No. 3 of 1849.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjea, Sudder Ameen of Moorshedabad, dated the 20th December 1848.

Neeto Kallee Chowdrain, and Soobudra Chowdrain, (Defendants,) Appellants,

versus

Meeah Arjomem Kowazeh Surah, (Plaintiff,) Respondent.

CLAIM, balance of a bond debt, amounting to Company's rupees 366.

This case came before the late judge, Mr. Russell, on appeal on the 20th June 1848, when the plaintiff was appellant and the defendants, respondents, and was returned by him for re-trial to the sudder ameen. He decreed the appeal on grounds which were explained at length in case No. 11 of 1848. He did not consider the investigation of the sudder ameen sufficient, and remanded the case that additional evidence, which was available, and which he considered important, might be taken. The sudder ameen has not carried out these instructions, and the case comes up again before the appellate court nearly the same as to its merits, but with the difference of the decision in favor of the plaintiff instead of the defendants. I therefore admit the appeal and again remand the case for re-trial.

THE 29TH MARCH 1849.

No. 34 of 1849.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Lalbaugh.

Hundoman Singh, (Plaintiff,) Appellant,

versus

Jarnoba and Gunga, wives of Rambucksh, deceased, and Debee Singh, minor, (Defendants,) Respondents.

CLAIM for Company's rupees 145-8, the value of jewels mortgaged, preferred on the 18th January 1848, and decided on 5th February 1849.

The plaint states that the plaintiff borrowed rupees 125 from Rambucksh, deceased, the husband of Gunga and Jarnoba, mortgaging as security gold and silver jewels to the amount of 145 rupees 8 annas, that shortly before the death of Rambucksh the plaintiff offered to pay the debt, and asked for the jewels, when Rambucksh told him that on paying the amount of the debt, without interest, to the defendant Gunga, the jewels would be returned to him by Jarnoba and Debee Singh, minor, and that after his (Rambucksh's) death he paid the money to Gunga but never received the jewels.

The defendant Jarnoba, for herself and the minor, Debee Singh, opposed the claim on the following grounds, that Rambucksh before his decease bequeathed by will all his property, personal and real, to Debee Singh, minor, appointing her his guardian, that the will was duly registered, that Gunga was the plaintiff's sister, and had been regarded by Rambucksh, while alive, as a woman of ill fame, and that being disappointed in not obtaining her husband's property she had brought a false action against the defendants through the plaintiff her (Gunga's) brother, and that, if there had been any dealing of the nature described between Rambucksh and the plaintiff, the latter could of course produce a catalogue of the jewels mortgaged with the signature of Rambucksh attached to it.

The defendant Gunga, in her answer, admitted the plaintiff's claim.

The moonsiff considered the case got up, and dismissed it chiefly on the following grounds: that the registered will appointed Jarnoba, and not Gunga, the guardian of the minor; that suspicion attached to the arrangement regarding the payment of the debt and the redemption of the pledge, viz. that the money should be paid to one party, and the property mortgaged restored by another; that Gunga was the plaintiff's sister living in the same house; that, had any transaction of the kind taken place between Rambucksh and the plaintiff, the latter could show some proofs of it, which he had not shown; and that had the plaint been true, Gunga would have and could produce the jewels, and that her answer and the plaint were similar.

I do not see any ground for disturbing the moonsiff's decision, and therefore confirm it, and dismiss the appeal.

THE 29TH MARCH 1849.

No. 36 of 1849.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Lalbaugh.

Wajda Beebee, (Plaintiff,) Appellant,

versus

Mirza Noor Ullee, *alias* Mirza Hunnoo, (Defendant,) Respondent.

CLAIM, laid at Company's rupees 63-12-3, preferred on 11th February 1848, and decided 8th February 1849.

THE plaint stated the plaintiff, in the month of Bysack 1254 B. S., had given 32 rupees to the defendant, her relative, for the purchase of the following articles, 14 for a horse, 10 for an eckah, and 8 for harness; that he (the defendant) procured the same, took charge of them for the purpose of letting them out on hire on her account, and that she was to receive the profits after deducting the expenses of grain, grass, &c.; after some time the defendant gave up the charge of the vehicle, and the plaintiff let it out on hire herself. On

the 15th Poos 1254 B. S., the defendant dispossessed the plaintiff of the turn-out, and appropriated the profits of hire to his own use. The plaintiff therefore brought an action against the defendant, calculating the demand as follows: Value of horse 40, eckah 18, and the amount of hire for 1 month and 9 days, 5 rupees, 12 annas, 3 pie, total 63 rupees, 12 annas, 3 pie.

The defendant denied the claim, and pleaded, in answer, that the eckah and horse belonged to himself, and that this could be proved by the person who made the eckah, and other witnesses, that the turn-out was left by him in charge of the plaintiff, when he accompanied the Nuwab Nazim to Calcutta, as one of his ghora sowars, and that the plaintiff had appropriated the profits of hire during his absence, which led to an altercation between them, and that the plaintiff in consequence had brought this action against him.

The moonsiff, considering the evidence adduced by the plaintiff unsatisfactory, and the pleas put in by the defendant to be established, dismissed the case with costs.

The plaintiff's case is not proved. The evidence brought forward is more in favor of the defendant. I therefore dismiss the appeal, and confirm the moonsiff's decision.

The 31st March 1849.

No. 25 of 1845.

Regular Appeal from the decision of Moulavee Syed Abdool Wahid Khan, first grade Principal Sudder Ameen of Moorshedabad.

Cheyt Lall Singh, (Defendant,) Appellant,

versus

Rao Ram Sunkur and John and Robert Watson, (Plaintiffs,) Respondents.

Suit laid at rupees 2,212, 9 annas, 6 pie, for enhanced rent, instituted on the 23rd December 1843, and decided 21st November 1845.

From the plaint it appears that the plaintiffs purchased pergunnah Rokonpoor at a public sale, and, after effecting a measurement of the lands, and fixing the rents according to the pergunnah rates, issued notifications under the provision of Sections 9 and 10, Regulation V. of 1812, calling upon the defendants to appear within fifteen days and enter into written engagements for the payment of the rents fixed. Upon their refusal this suit was brought by the plaintiffs against them.

The defendant Cheyt Lall Singh pleaded that the notices were irregularly served, and that the plaintiffs, with the view of obtaining possession of the jote and rent-free lands, &c., belonging to his deceased father-in-law, Sheebram Singh, had excluded the names of the true heirs, and brought this action against the defendants, viz. Cheyt

Lall Singh and Saya Koonwur Bermoneh, Sheebram's second wife; that the said Sheebram's father, Khosal Singh, obtained a pottah of the jote lands at a yearly fixed rent of 43 rupees, 6 annas, 2 pie from Lukheenarain Roy Bungodheekaree before the decennial settlement, that the khals and jungle lands comprised within the pottah had been drained and cultivated at a great expense, and possession retained without let or hinderance from any of the zemindars to whom the zemindaree successively lapsed; that Sheebram Singh and his heirs had always paid the same fixed rent without increase or diminution, and that therefore the lands comprised within the pottah could not be assessed at an enhanced rent.

Saya Koonwur defendant put in the same pleas as Cheyt Lall, with the difference that she claimed, as heir of Sheebram Singh, possession of the whole of his property, both personal and real, and stated that Cheyt Lall Singh being her son-in-law had no right whatever to the property during her lifetime.

The plaintiffs demurred and the defendants, Cheyt Lall and Saya Koonwur, rejoined, the chief point at issue being the pottah, or deed of lease.

The principal sudder ameen gave a decree in favor of the plaintiffs, modifying however the claim.

He did not consider the pottah genuine, and he disallowed the demand for rent from lands which the defendants proved to be rent-free and not liable to assessment. The decree was to be put in force against Saya Koonwur and not Cheyt Lall, as Cheyt Lall was only son-in-law, and had consequently no title to the property.

Cheyt Lall Singh appealed to this court against the decree on the points mooted in the plaint before the principal sudder ameen, and on the ground that the decree being only against Saya Koonwur would affect the interests of Ram Lall Singh, minor son of Cheyt Lall Singh.

It appears to me that the four principal points for consideration, are, the serving or issuing of the notifications, the validity of the pottah, the fairness of the assessment, and how far the principal sudder ameen's decree against Saya Koonwur only can affect the minor's interests.

There is no dispute regarding the purchase of the property at public sale.

The notifications were issued according to Regulation V. of 1812. It is not necessary that the quantity of land should be entered nor the names of all the proprietors. The actual rent for the current year must be specified, and the names of the proprietors recorded in the zemindaree papers (see the Reports of the Sudder Dewanny Adawlut, 14th April 1845.)

The pottah is a suspicious document. It bears only the seal of Luckeenarain Roy without his signature. It has never received the sanction of any court, and from the dakhilas, or receipts for rent

paid by the defendants in different years, it is shown that the rent was not a fixed one, but varied.

The amount of rent demanded by the plaintiffs exceeded, in the opinion of the principal sudder ameen, what was justly due, and the claim was modified by him in consequence.

The following statement will show the rates of rent at which the assessment was made by the plaintiffs, the rates fixed by an ameen deputed for the purpose, and the rates allowed by the principal sudder ameen after comparison with the ameen's roedaad, proprietors' list, and deputy collector's roobakarree:

Description of land.	Rate of assessment of the plaintiff.			Rate fixed by the ameen.			Rate allowed by the principal sudder ameen.		
	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.
Bastoo pucka houses per beegah,	25	0	0	15	0	0	7	0	0
Pucka keriah houses ditto,	40	0	0	0	0	0	0	0	0
Kucha houses or bastoo ditto,	20	0	0	12	0	0	0	0	0
Oodbastoo per beegah,	10	0	0	5	0	0	3	0	0
Matan toot or mulberry ditto,	3	0	0	1	4	0	1	0	0
Mathan land of every description ditto,	1	0	0	0	14	0	14	14	0
Fallow lands of every description ditto,	1	0	0	0	0	0	0	8	0
Mangoe garden, &c. ditto,... Those planted by the possessor ditto,	10	0	0	8	0	0	4	0	0
	2	8	0	5	0	0	0	0	0
Grass land ditto,	1	0	0	0	0	0	1	0	0
Betel (pan) planted land ditto,	16	0	0	10	0	0	4	0	0
Straw ditto,	1	0	0	1	4	0	0	8	0

The rates taken by the principal sudder ameen are moderate and favorable to the defendants.

The defendants, in appeal, put in documents as per margin to show that in the case of Saya Koonwur *versus* Cheyt Lall Singh, guardian of Ram Lall Singh, Khoodun Koonwur and others, defendants, decided by the principal sudder ameen on the 11th August 1845, the claim under a private agreement of Cheyt Lall Singh, on the part of Ram Lall Singh, minor, to one-half of the property, and of Saya

Precedent roobakarree of the collector of Moorshedabad, dated 29th January 1846.

Do. do. authorizing dakhil kharij of the names of the minor and others, dated 20th April 1848.

Koonwur to the other half had been admitted. These documents were not entered in the present case before the principal sudder ameen, nor do they affect it. They do not prove that Cheyt Lall is the legal guardian of the minor son, nor do they disprove the title of Saya Koonwur as heir to the property during her lifetime.

The decree of the principal sudder ameen on all the points appears to me just, and I see no reason to interfere with it. The appeal is therefore dismissed with costs.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 21ST MARCH 1849.

No. 8 of 1849.

Regular Appeal from a decision passed by Baboo Kassishur Mitter, Moonsiff stationed at Sooksagur, on the 22nd December 1848.

Doorganund Chuckurbutty, (Plaintiff,) Appellant,

versus

Shama Soondree Dibeea, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff (appellant) for the recovery of Company's rupees 15, principal, and rupees 15, as interest, the debt being of more than nine years' standing.

The defendant denied the debt *in toto,* and, in her answer to the plaint, stated she was not at the place where the plaintiff's alleged bond was executed, but at a village in the Hooghly district, on the other side of the river.

The plaintiff has filed a bond, dated the 24th of Assin 1246, corresponding with 9th of October 1839, and has caused the depositions of the man who wrote the deed, and of the two subscribing witnesses to be taken.

The moonsiff dismissed the claim, as he was of opinion the deed appeared to have been written more recently than the witnesses allow, and that he considers the witnesses have been tutored.

I do not see any grounds for admitting the appeal, or reversing the moonsiff's decree.

The appellant has advanced nothing new in his appeal, but repeated what he advanced in the original suit, and has not shown any sufficient reason for reversing the decision.

I am of opinion that for so small a sum as rupees 15 the plaintiff would have sued sooner, had his claim been a good one. The evidence of his witnesses is conflicting. The person who has sworn that he wrote the bond, says he never saw the defendant either before or since; and though he swears to the deed, the other witnesses cannot do so as they do not know how to read or write. There are numerous discrepancies in their statements, and I agree with the moonsiff in thinking they have been tutored. Under these circumstances, there is no occasion, under the provisions of Clause 3, Section 16, Regulation V. of 1831, to summon the respondent.

ORDERED,

That the appeal is dismissed, and the moonsiff's decree confirmed, of which intimation is to be sent to that officer.

THE 21ST MARCH 1849.

No. 9 of 1849.

Regular Appeal from a decision passed by Baboo Punchanun Bannerjea, Moonsiff of the Sudder Station, Kishnaghur, on the 23rd December 1848.

Gholam Moostapha, (Defendant,) Appellant,

versus

Ishur Ghose, (Plaintiff,) Respondent.

THE appellant was plaintiff in a summary suit in the collector's office when he sued for rent for 23 biggahs and 14 cottahs, which he alleged the respondent had in occupancy.

The respondent appeared to answer to the demand, which he denied; but the revenue officer, on the grounds of that quantity of land being entered in the respondent's name in the measurement papers, when the land was resumed for settlement, gave the claim against him.

The respondent instituted a suit to reverse the summary decision above alluded to, which the moonsiff has set aside on the following grounds:

First.—That the appellant produced no written engagement of the respondent to pay rent, and he had not either proved that the respondent had the land in his occupancy.

Second.—That according to the appellant's request an ameen had been deputed three times for the purpose of making local investigations, but the appellant had not pointed out the land.

Third.—The measurement papers alone are not sufficient nor satisfactory proof of occupancy.

It appears, on a perusal of the record, that the appellant applied to the moonsiff on the 21st of December 1848, (or two days before the suit was disposed of,) to request that, as the lands on which he claimed rent were situated in mouzah Jaipoor, he might be allowed to have the benefit of witnesses belonging to that village. His request was refused, and two days after the case was decided against him. The appellant was only the farmer of the land, which he obtained from the rajah of Nuddea, with whom the settlement was formed, and he, as farmer, called on those whose names he found in the official measurement papers to pay him their rent. He had no kubooleeut signed by the respondent to produce, but merely went on the ameen's papers; and under these circumstances, the moonsiff ought to have allowed him to summon and examine any witnesses he named, to prove the fact of the occupancy of the respondent.

It is to be feared the moonsiff, as it was near the close of the year, was disinclined to allow the appellant further time to prove what he considered a bad case, but he ought, notwithstanding, to have taken his proofs. Under these circumstances, and the provisions of Section 2, Regulation IX. of 1831, I admit the appeal, and order that the record be returned to the moonsiff's file, in order that he may call upon the appellant to give in the names of his witnesses at once, and, having caused the land claimed to be clearly defined and proved, to dispose of the suit on its merits.

The value of the stampt paper used for the appeal is to be returned to the appellant, in the usual mode; and when the suit is finally disposed of, it will be decided which party is to bear any other costs of appeal, which are for the present to be borne by the appellant.

THE 23RD MARCH 1849.

No. 11 of 1849.

Regular Appeal from a decision passed by Baboo Kassishur Mitter, Moonsiff stationed at Soohsagur, on the 30*th December* 1848.

Punchanun Chatterjea, (Defendant,) Appellant,

versus

Rajnarain Chatterjea, (Plaintiff,) Respondent.

THE appellant in this suit objected to the decree passed against him, on the grounds that it was passed *exparte*, that he had no notice of the suit, and that the witnesses were strangers and not residents of his village. On a reference to the record of the moonsiff's proceedings it appears that the peadah, who was entrusted with serving the process on the defendant (appellant,) as well as two witnesses, have deposed that, in consequence of the defendant (appellant) not being in his house, the peadah called the witnesses, who were passing through the village, and a brahmin, whose name is unknown, to witness the pasting of the proclamation on the defendant's house. The brahmin would not tell his name; and the two other men stated that they saw the paper pasted on the chundee mundup of the defendant. The village chowkeedar gave a receipt, which was written by the unknown brahmin, and the two witnesses merely touched a pen. This evidence is very unsatisfactory, and does not prove that the defendant was apprised of the suit being pending against him. The moonsiff has put into his decree that the plaintiff's vakeel had informed him that, the day the witnesses' depositions were taken, the defendant's son was present, and therefore infers that the defendant must have known that the suit was pending. This is only an inference of the moonsiff and unsupported by any proof.

I do not consider this evidence satisfactory, and, if admitted, would form a bad precedent. It is therefore ordered, in conformity with the

provisions of Clause 2, Section 2, Regulation IX. of 1831, that the suit be returned to its original place on the moonsiff's file, and that the moonsiff take the defendant's (appellant's) answer to the plaintiff's claim, and, if necessary, summon the plaintiff's witnesses again, to allow the defendant or his vakeel to cross-question them, and, having fully investigated the case, to pass a legal order.

The value of the stamp for making this appeal,is to be returned to the appellant; in the usual mode; and any other costs of appeal incurred by him will be awarded as may appear just and equitable, when the suit is finally disposed of.

THE 23RD MARCH 1849.

No. 12 of 1849.

Regular Appeal from a decision passed by Baboo Kassishur Mitter, Moonsiff stationed at Sooksagur, on the 30*th December* 1848.

Dassee Munnie Debeea and others, (Defendants,) Appellants,

versus

Gour Munnie Debeea and others, (Plaintiffs,) Respondents.

THE appellants in this case were defendants in a suit decided by the moonsiff, in which he decided that the plaintiffs had no claim against them, and yet left them to pay their own costs.

From his order they have instituted this appeal. I am of opinion that it was more an oversight on the part of the moonsiff than any thing else, for had he for any reason left the appellants to pay their own costs, he would have stated his reasons and made the order clear.

The decree being clearly in favor of the appellants, the moonsiff ought, as directed in Section 7, Regulation IV. of 1793, to have decreed their costs in their favor. This might have been rectified in this decision, only that the original suit in which the appellants were defendants has this day been returned to the file of the moonsiff for further investigation.

It is, therefore, in conformity with Clause 2, Seetion 2, Regulation IX. of 1831, ordered, that a copy of this proceeding be sent to the moonsiff, in order that in passing his decree he is to pass a lègal order regarding the appellants' costs, both in the original and appeal suit. The value of the stampt paper for instituting this appeal, is to be returned to the appellants in the usual mode.

THE 23RD MARCH 1849.

No. 13 of 1849.

Regular Appeal from a decision passed by Mahomed Waffee, Moonsiff stationed at Panneeghatta, on the 22nd December 1848.

Bunmalleenath Jogee, (Defendant,) Appellant,

versus

Kishun Mohun Chatterjea, (Plaintiff,) Respondent.

THE plaintiff sued for the balance of a debt due to him by the appellant and six others. The appellant and another appeared and gave in an answer acknowledging the debt, but stating that they had paid the whole sum due, but had not received the bond back from the respondent, he having made an excuse that it had been carried off, together with other papers, &c. by dacoits. He, however, gave a memorandum (hath chitta) for the amount.

The other defendants made no reply.

The moonsiff called on the plaintiff for his proofs of his claim, and on the defendants for their proofs.

The plaintiff filed the bond according to which he claimed, and proved it by two credible witnesses. The defendants were called on to file their proofs of having paid the debt, on the following dates: 12th July, 29th August, 9th September, 12th September, 13th ditto, 9th November and 15th December 1848, but failed to comply.

The appellant has now appealed by himself, and urges the same objections to the plaintiff's claim, but makes no allusion to his not being able to substantiate his allegations before the moonsiff. The investigation held by the moonsiff has been perfectly fair and just, and the appellant, if he had any just grounds for objecting to the claim, should have done so while it was pending in the court of primary jurisdiction. Not having done so, I consider his appeal groundless and vexatious; and as provided for in Clause 3, Section 16, Regulation V. of 1831, there is no occasion to summon the respondent. I accordingly dismiss his appeal, and confirm the moonsiff's decree in full.

THE 24TH MARCH 1849.

No. 20 of 1849.

Regular Appeal from a decision passed by Luckheenarain Mitter, Moonsiff stationed at Kaguzpookooreah, on the 31*st January* 1849.

Chunderkaunt Ghose, (Plaintiff,) Appellant,

versus

Kownlah Mookhee Debbia, (Defendant,) Respondent.

THE appellant prosecuted the respondent for a bond debt, which the moonsiff has decided against him in a very long, absurd, and in

some places unintelligible decree. Instead of merely considering and recording the points at issue, and inserting the same in his final decree, he has not paid any attention to the Circular Order of the Presidency Court of Sudder Dewanny Adawlut, dated the 8th of January 1841, No. 128, and to be found in the *Bengalee Gazette* for 1841, No. 127, page 41, which, though addressed to principal sudder ameens, applies equally to all courts. In it, it is clearly laid down that the grounds upon which decisions are founded, should be drawn up with distinctness and brevity, and must not contain any matter immaterial or irrelevant to the suit.

On referring to the record of the case it appears that the plaintiff, at the requisition of the moonsiff, exhibited his account-books, and on the 12th of June 1848, he swore to the correctness of his accounts and the justness of his claim.

This the moonsiff has not only overlooked, but has omitted all mention of, in his decision.

As this has been omitted, and I consider the decree passed by the moonsiff to be contrary to the spirit of the Circular Order above alluded to; ordered, that the decision be reversed, and the case returned to the moonsiff under the privisions of Clause 2, Section 2, Regulation IX. of 1831, with directions to try the case over again, and to write an intelligible judgment, that is consistent with law and justice.

The price of the stampt paper for the appeal to be returned to the plaintiff in the usual mode. The costs of appeal must now be borne by him, and when the suit is finally disposed of, they will be awarded as may appear just.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, ESQ., JUDGE.

THE 13TH MARCH 1849.

No. 4 of 1848.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 30*th December* 1847.

Gundun Singh, (Plaintiff,) Appellant,

versus

Soochet Singh and another, (Defendants,) Respondents.

THIS is a suit to establish right of pre-emption, and to obtain possession of 1 dam in a 12 annas share of mouzah Sethurkab, pergunnah Musohra, thereby, dismissed by the principal sudder ameen on the ground of non-fulfilment of the requirements of the Mahomedan law. Appellant asserts that he has proved by witnesses that he did fulfil all those requirements of the law. But it appears from the futwa of the law officer and the plaintiff's petition of plaint, that he omitted acts, the performance of which is a condition essential to the validity of a claim of this nature, viz., to declare his right, and claim pre-emption at the moment of being informed of the sale, and secondly, to take witnesses of his demanding his right from the seller or purchaser. The futwa of the law officer declares that his having proved making the demand simply is of no avail, without the establishment of the performance of the acts omitted. Under these circumstances it is clear that the decision is conformable to the law as declared by the law officer, and I hereby confirm it, and dismiss the appeal without issuing notice to the respondent.

THE 15TH MARCH 1849.

No. 3 of 1848.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen passed on the 9*th December* 1847.

Juggunnath Pershad, (Plaintiff,) Appellant,

versus

Gowree Shunker and others, (Defendants,) Respondents.

SUIT, laid at rupees 1,148-5-9, for the recovery of value of grain with interest, &c., due by the defendants as cultivators of 30 beegahs,

11 *cottahs of land*, being the proportion of the produce due as rent for the years 1248 to 1252 F., (both years included.)

The case was tried and decided in the first instance by a former additional principal sudder ameen of this city, who dismissed the suit on the following grounds:

The plaintiff grounded his claim on certain 'luggits,' or statements of the money demanded on account of the 'hakimee' share of the produce of all the harvests, made out evidently at the end of the year. The amount of the produce is assumed from a "danabundee," or appraisement of the crop standing: and the quantity of each article of produce is turned into money at certain prices. These luggits are disputed by the defendants, who contend that the division of the crops according to the long established usage of mouzah Dhumol, in which their lands are situated, was always an actual one by a system denominated "agor bhutai," and not an estimated one by appraisement, and consequently, plaintiff must have received and did receive every year and every harvest his due share of the harvest, by actual division in the threshing floor (khirmun,) excepting in the year 1252, when there was nothing, on account of the complete failure of the crop, to divide. Defendants, moreover, contended that they cultivated not 30 beegahs, 11 cottahs, but 16 beegahs, 1 cottah only. The additional principal sudder ameen, for very cogent reasons, as it appears to me, rejected these luggits, which he described as the foundation of plaintiff's claim, as unworthy of credit, and considered it extraordinary that plaintiff should have assigned no reason for having received no part of his dues, for so long a time, and having suffered this state of things to continue without taking any measures. On the other hand he found the defendants' statement respecting the custom of actual division of the crop by "agor bhutai" established by their documents, and inferred, therefore, that the 'hissa hakimee' must have been regularly received in the 'khirmun.' The then judge, on an appeal from the plaintiff, remanded the suit to the lower court with orders "to depute an ameen to the spot and make further and fuller enquiry." This has been done: the lands, after the fruitless deputation of one ameen, were measured by another, who reports that they measure only 16 beegahs or thereabouts, and that the crops appear from the evidence of the cultivators of the neighbourhood to have been regularly divided at the harvest. The present principal sudder ameen therefore again dismissed the suit.

The object of the present appeal is a second remand, on the ground that the ameen did not carry out the orders of the court, not having measured the lands according to the boundaries furnished by appellant, and having examined witnesses from a distance, instead of the inhabitants of the neighbourhood, and that he carried on the enquiry and effected the measurement in the absence of appellant or his agents.

I agree with both the principal sudder ameens, in thinking it established by the documentary evidence of the defendants that the usage in collecting from these lands, prevalent in 1242 F., was by actual weighment and division of the crop. Plaintiff's proofs, as argued by the principal sudder ameen on the first trial, failed to establish the prevalence in the years for which the claim is made, of the other system by estimate and appraisement of the standing crop. It must therefore be presumed that the "agor bhutai" system still prevailed; and the inference from that is, that plaintiff divided the crop, as they were got in, with the defendants. For he must have been sensible that, if he should neglect to exercise his right at the proper time, his claim to do so afterwards, when the crop had been removed, must prove abortive. Be that as it may, as the plaintiff failed to establish the ground on which he sued, as observed in the first decision of the lower court, a decree could not pass in his favor. Although, therefore, the ameen's execution of his orders may have been defective in respect to the measurement, I see no reason to grant a second local enquiry, to enable plaintiff to prove before the ameen what he ought to have proved by evidence in the presence of the principal sudder ameen, viz. the prevalence of the usage of estimating and appraising the standing crop, and the actual appraisement of each crop, especially when it is admitted that his agents, who might have pointed out the residents of the neighbourbood capable of giving evidence in his favor, did not attend the first enquiry, and it does not appear from the reasons of the appeal through what fault or omission of the ameen their non-attendance arose. For these reasons I dismiss the appeal, and confirm the decision of the principal sudder ameen, without calling on the respondent to reply.

THE 16TH MARCH 1849.

No. 31 of 1847.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 10*th August* 1847.

Shumsamooddeen Khan, and afterwards on his demise, Enaet Alli Khan, his heir, (Plaintiff,) Appellant,

versus

Bulbhudhur Misser, (Defendant,) Respondent.

SHUMSAMOODDEEN'S property in two houses being sold jointly to the respondent and Mudaree Sahoo, in execution of a decree held by the latter, and he and Shumsamooddeen afterwards, but before confirmation of the same, compromising, applied to the court to cancel the sale, but their application was rejected. Plaintiff's suit to cancel the sale has been dismissed, because the sale was perfectly regular, and the notification, to the court making the sale, of a compromise

after the sale has taken place, has been ruled by the Court of Sudder Dewanny Adawlut to be no ground for a reversal, and further because it is against the rules of practice to confirm a sale as to one-half of an undivided lot, and to cancel it as regards the other half.

The appellant pleads, as in the lower court, that the receipt of full payment of his decree by the decree-holder and his relinquishment of his share of the purchase, are sufficient grounds for reversal, particularly as Bulbhudur in his petition opposing the prayer of the petitioners for reversal only, claimed the confirmation of the sale of one-half, under which circumstances the confirmation of the sale as regards the whole property was irregular. Further, that the sale was irregular inasmuch as the boundaries of the properties sold were not accurately specified, and the sale took place at 4 o'clock in the afternoon instead of 10 o'clock a. m., as notified in the advertisement. The objection in respect to the specification of boundaries is unsupported by any proof in the lower court. And seeing nothing in the other reasons of the appeal, which can constitute ground for altering it, I hereby dismiss the appeal and confirm the decision.

THE 16TH MARCH 1849.

No. 4 of 1848.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 30th December 1847.

Gunga Bishun Misser, (Defendant,) Appellant,

versus

Bolakee Sahoo and others, (Plaintiffs,) Respondents.

THIS suit, laid at rupees 987, annas 3, pie 6, to cancel a deed of sale alleged to be collusive and void, and to recover the amount of a previous decree by the sale of the property conveyed by the said deed, was decreed by the principal sudder ameen, on the grounds that the property in question had been pledged to the repayment of a loan, a decree for which had been passed against the estate of Mahomed Hossein, deceased, represented by the defendants, Musst. Hoorun and Musst. Usmut, of which estate the property in question formed a part; that the loan remained unliquidated at the time of the alienation by those defendants, and that it was therefore void; and further, that the sale was fictitious and collusive. The facts of the case, as pleaded by the plaintiffs and shewn by the record, are these:—The plaintiffs sued Hoorun and Usmut for the recovery of the amount of the loan taken by their husband and father respectively, Mahomed Hossein, who, by way of security for the repayment, had, as established in the former case, granted plaintiffs a lease terminable only on the complete liquidation of it, and put them in possession; but after his death, and the resumption and settlement of the estate, which was held rent-free at the time of the farm being

granted, plaintiffs lost possession. The sudder ameen, without specifying his reasons, exempted the defendants in that case from liability for any thing further than their own costs, and decreed the satisfaction of the plaintiff's claim from the estate of their deceased relation, Mahomed Hossein. On the decreed-holders' (plaintiffs in the present suit) proceeding to cause the sale of the property, which had been given in farm as security for the loan, the present appellant came forward with an objection to its sale, on the ground of his having purchased it under the deed now declared void, which deed dates subsequent to the decree in the first suit; and the sudder ameen, on a summary enquiry, exempted the property from sale. The appellant, then as now, contended that, no attachment having been proclaimed under Regulation II. of 1806, the sale was valid according to Construction No. 588. I agree with the principal sudder ameen in thinking that the rules of the above regulation have no applicability to this case, and a decree having passed for the satisfaction of the creditors from the estate of a deceased party, no other party could have a right to take possession of and alienate that property, especially a party who had been exempted from the payment of the deceased's debts. I therefore dismiss the appeal, and confirm the decision, without issuing notice of appeal to the respondent.

THE 21ST MARCH 1849.

No. 11.

Appeal from a decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 26th January 1848.

Hajee Rujub Alli, (Plaintiff,) Appellant,

versus

Hafiz Muhumud Hyat and Jan Alli, (Defendants,) Respondents.

THIS suit, laid at rupees 947, for the price of 47 corge and 7 hides, asserted to have been purchased by the defendant, Hafiz Muhumud Hyat, at rupees 20 per corge, on the security of the other defendant, Jan Alli, was dismissed on the ground of the insufficiency of the evidence adduced by the plaintiff. When the grounds of the appeal, and the evidence of the witnesses who had been heard in the lower court, had been perused, appellant applied by petition, dated this day, for the admission of further evidence lately discovered, viz., copy of the schedule of his debts filed by the defendant in the Court for the relief of Insolvent Debtors in Calcutta, with his petition, praying for the benefit of the Act. The discovery of this evidence was made by the means of a notice from the chief clerk, of the day fixed for the hearing of the petition, which was received by the plaintiff, who, however, has not yet obtained a copy of the schedule

in which, he alleges, his name appears as a creditor of the defendant. It appears to me proper that an opportunity should be given to the appellant to produce this further evidence. I therefore return the case to the court of the principal sudder ameen, and direct that reasonable time be given to the plaintiff for the production of the document, and, should he exhibit it in court, that the case be again tried with advertence to the same. The value of the appeal stamp will be returned to the appellant.

THE 23RD MARCH 1849.

No. 12.

Appeal from a decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 25th January 1848.

Namuk Buksh and Ram Buksh, (Plaintiffs,) Appellants,

versus

Ahmud Buksh, Musst. Pearee Begum, Musst. Imamee Jan, Musst. Amanee *alias* Shazadee and Musst. Muhumdoo Jan, (Defendants,) Respondents.

SUIT for the amount of a bond, with interest, amounting to rupees 359-4 annas.

Notice being issued was returned with an acknowledgment, purporting to be from the defendants, through Jhumun Lall. Ishtehar was reported, on the attestation of the chowkeedar, to have been hung up in the dwelling house of the defendants. One only replied to the plaint, viz., Muhumdoo Jan, who confessed judgment.

The principal sudder ameen dismissed the suit, chiefly on the ground of the failure of proof as to the execution of the bond and receipt of the money by the defendants.

The appellants urge that those facts are provéd by the evidence they adduced. I find that the tumussook bears date 28th August 1845, and bears a certificate of registry by the pergunnah kazee, dated 1st October following, through the instrumentality of Nawazish Hossein, who presented a mookhtarnamah, dated 29th September. The witnesses on the bond are Ushruf Hossein, who appears to be husband of the defendant confessing judgment, and who was not called by the plaintiffs, Deochund Sahoo, also not called, Jhumun Lall, Sookhoo Ram, and Ram Dyal Sahoo, who gave evidence. None of these, according to their own testimony, witnessed the execution of the bond by the defendants. One only, Ram Dyal, states that he witnessed the delivery of the deed and payment of the money on a date subsequent to the execution. The payment of the money, however, was made, he says, not to the defendants, but to Nawazish Hossein. The mookhtarnamah, it has been seen, was not executed till a month after the bond; but further it has not been produced from the office of the kazee, who reports that it is not to be found

there. Nawazish Hossein deposed that he was employed by the defendants to borrow the money, rupees 300, from the plaintiffs: that the deed, having been signed, was taken by him with a mookhtarnamah to the kazee's office and the kazee's seal affixed: that, however, the plaintiff, Ram Buksh, who went to the kazee's office with him, paid to Ahmud Buksh only rupees 130 or 141: that Ushruf Hossein was afterwards sent with witness to the plaintiffs to get the remainder of the money and to deliver the deed: that plaintiff wished to pay the remainder by a credit for the amount of a former debt, but on his promising to send cash after comparing the deed with his father, Ushruf Hossein left the deed with him, and he never paid any thing further; moreover, witness believes his female client never got any part of the rupees 141, received by Ahmud Buksh. Such being the nature and extent of the evidence, I think the principal sudder ameen was right in dismissing the suit under the provisions of Section 15, Regulation III. of 1793, and the Circular Order of the Sudder Dewanny Adawlut, dated 25th November 1847. I therefore dismiss the appeal, and confirm the decision, without calling upon the respondents to plead.

THE 28TH MARCH 1849.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 17th February 1848.

Meer Shoojait Alli, (Defendant,) Appellant,

versus

Musst. Junglee Khanum, (Plaintiff,) Respondent.

THIS suit for possession of a $\frac{1}{8}$th share in 4 annas of Jyteea and other mouzahs, pergunnah Sandeh, and of certain houses and other buildings, the property of plaintiff's deceased husband, Fyz Alli, grounded on a deed of partition by amicable settlement, "tukseemnama and soolehnama," said to have been executed by the defendant (appellant,) was decreed by the principal sudder ameen, on the grounds of the substantiation of the said deed, and of the said defendant's receipt to a notice issued to him, on the petition of plaintiff, to be allowed to sue against him *in formâ pauperis* for possession upon the share now litigated, in which receipt he is said to have admitted her claim.

The appellant pleads that a document purporting to be only a copy of the deed in question, was exhibited in evidence by the plaintiff, and the witness examined with a view to establish the execution of the said deed, had, of course, proved nothing, as he could not identify his signature upon a mere copy; secondly, that he never granted the receipt in question, and no sufficient proof had been adduced of his having done so.

It is evident that the document exhibited by the plaintiff is merely a copy of a deed registered in the registry office, but that fact is not even noticed in the reasons for the decision. It appears also that

defendant contends that the copy of a notice which plaintiff exhibited was not that of the notice which had been served upon him; to prove which assertion, he filed the copy of another notice, with a receipt of his on the back, which seems to have been issued upon another application, but defendant contended that there was but one application and one notice. No steps seem to have been taken by the principal sudder ameen to clear up this point, and it does not appear in the reasons for the decision that the original of either notice, a copy of each of which the parties exhibited, was inspected. Neither does it appear that proof to substantiate the receipt pleaded by the plaintiff was taken or called for. Owing to these omissions, the investigation is, in my opinion, incomplete. I therefore decree the appeal, and remand the suit to the lower court, in order that the principal sudder ameen may call upon the plaintiff to produce, or to state and prove the cause or causes of her inability to produce, the original deed of partition; may send for and file with the proceedings the original notice or notices to the defendant (appellant;) may call for proof of the said defendant having written and signed the receipt (if found) upon that one copy of which was exhibited by plaintiff; and afterwards again decide the case on its merits. The value of the stamp of this appeal will be refunded.

THE 28TH MARCH 1849.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen, passed on the 9th March 1848.

Enaet Alli and twenty-six others, (Defendants,) Appellants,

versus

Meer Ismael Alli, (Plaintiff,) Respondent.

THIS suit, for possession on 189 beegahs, 1 k., 1 d., which plaintiff alleged belong to his mouzah Mudhor and was taken possession of by the appellants and others under colour of the revenue survey, which included them in the map of mouzah Mijjra contiguous to it, was remanded for the consideration of a decree of a former judge, and a local enquiry. The enquiry having been now made under the orders of the lower court through the moonsiff of the eastern division, the disputed lands have been adjudged to the plaintiff as belonging to mouzah Mudhor.

The chief ground of the appeal is, that the enquiry of the moonsiff is faulty, but nevertheless it proves the falsehood of plaintiff's statement. The boundaries, it is urged, of the disputed land set forth in the report of the moonsiff, do not correspond with those assigned to them by the plaintiff's vakeel. I find it mentioned in the moonsiff's report that plaintiff's description of the boundaries does not correspond exactly with them as they appeared to the moonsiff, and as he has described them in his roobakaree; but what is of much greater

consequence I find that neither the description of the boundaries given by plaintiff's vakeels on the requisition of the principal sudder ameen, nor that given by the moonsiff in his roobakaree, is such as could enable the officer executing the decree to identify and lay down those boundaries: for in those situations, where the disputed land is said to be contiguous to the lands of Mudhor or Mijjra, which, of course, they all are on one side or other, the northern or other boundary is said to be simply the undisputed land of Mudhor or of Mijjra, as the case may be, and no other particulars are stated from which it may be understood where the disputed land begins and the undisputed ends. Further, the decision does not mention whether plaintiff is to get possession according to his own specification, or according to the moonsiff's specification of the boundaries of the disputed land, or in what situation the 148 beegahs, 10 c., 15 d., decreed are to be marked off and delivered into possession of plaintiff. The investigation and decision are equally inconclusive and incomplete. I therefore decree the appeal, and, reversing the decision, remand the suit to the lower court, in order that copies of the survey maps of all the mouzahs contiguous to the disputed land may be filed with the proceedings, the disputed lands laid down on the map in which they may appear to have been included, by the deputation of the moonsiff or an ameen to the spot, and by actual measurement, where it may be necessary, a report, containing a minute description of the boundaries be obtained; and a decision be passed after due consideration of it, in clear and precise terms, such as may leave no room for further litigation as to the meaning and scope of the decision. The value of the stamp of this appeal will be refunded.

THE 30TH MARCH 1849.

Appeal from the decision of Moulvee Mohomed Majid, Principal Sudder Ameen of Bhaugulpore, passed on the 27th February 1845.

Rae Bishnath Singh, Gunga Bishen, Luchmee Narayen, and Koonj Beharee Lall, (Defendants,) Appellants,

versus

Sheikh Fuzul Hossein, and after his demise, Musst. Zuhoorun and others (Plaintiffs,) Respondents.

SUIT for Company's rupees 2,469-6-2, principal and interest of revenue on account of the year 1241 F.

The judge of Bhaugulpore having reversed the decree of the principal sudder ameen, dated 27th January 1845, against the appellants, a special appeal was preferred by the plaintiff, and the case was remanded by the Court of Sudder Dewanny Adawlut in these terms:—

" The plaintiff in this case purchased an estate at a public sale, made by the collector of zillah Behar for the recovery of arrears of Government revenue, on 8th Aughun 1241 F., corresponding with 5th December 1833; but in consequence of the sale having been contested before the revenue authorities, he did not receive his umul dustuk till the 21st Bhadoon following, or 9th September 1834, that is, the close of the Fuslee year 1241; but under the sale law he was answerable for and paid the Government revenue from the date of his purchase. The present suit was brought to recover the amount, thus paid, from the defendant in possession of the estate up to the close of 1241 F. Of seven defendants three were the former proprietors of the estate and four were described as farmers in possession under lease from the proprietors. The farmer defendants stated that they held the estate in farm as security for a large sum of money advanced by them to the proprietors, but that, previous to the sale, they had re-let the estate to the proprietors, who had caused the sale to deprive them of the means of realizing their debt and had purchased it themselves in the name of the plaintiff. On the 27th January 1845, the principal sudder ameen decreed for plaintiff against the farmers, exonerating the late proprietors. On appeal the judge proposes three questions for consideration.

First. Is the plaintiff the real *bonâ fide* purchaser of the estate, or are the late proprietors the real purchasers in his name ?

Secondly. Who was in possession of the estate between the date of the sale and the date of the umul dustuk delivered to the purchaser ?

Thirdly. Supposing the farmers to have been in possession, did they pay the Government revenue?

" On the first point the judge declares the real purchasers to be two of the late proprietors in the name of the plaintiff. On the second point he declares the former proprietors to have been in possession to the close of 1241 F. in virtue of an under lease from the farmers. And without recording any opinion on the third point, he reverses the decision of the principal sudder ameen, and dismisses the claim altogether.

" A special appeal is applied for on the grounds that, after the sale had been confirmed by the revenue authorities, the farmers instituted a regular suit in the civil court to have the sale cancelled, on the grounds that the estate had been bought in by the late proprietors, in the name of the present plaintiff, declared to be the real purchaser. Under these circumstances, the petitioner pleads that, on the question of a " benamee" purchase by the late proprietor, the judge was bound by the decision in the case instituted by the farmers, and it was not competent to him, in the present case, to declare contrary to the decision in that case.

" Concurring in this, we admit a special appeal, and remand the proceedings to the judge on the first point, in the solution of which he is bound by the former decree; and with reference to this, it will

be for him to decide what alteration it may make in the general issue."

It is for this court now to take up the case from the solution of the second point at which the judge of Bhaugulpore had arrived when he made the above decision; to draw the inferences from it; and to consider the third point.

The judge has decided upon the second point, that the former proprietors were in possession by virtue of the under lease from the farmers. If it be not intended by this to infer that the farmers were also in possession, as such, receiving the rents from the under lessees, this is nevertheless clear from the summary decree to which the judge refers as one of the proofs of the possession of the late proprietors. For in the suit decreed therein, the farmers were plaintiffs against them for that portion of the rent which was payable under the terms of the under lease to them, the other portion of it being payable under the denomination of revenue, according to the same terms into the Government treasury. The ground of the decree was that the plaintiffs were parties in occupancy of the lands accountable for the rents to the plaintiff in this case, and the defendants' parties in occupancy accountable to them. This decree continues in force, and may possibly have been fully executed. As the farmers obtained this decree under colour of their right to collect the whole assets for the proprietor, who, by the principles of the revenue settlement, has the first lien on them, it is in vain for them to plead their non-liability, and it would be contrary to those principles to declare them not liable for the payment of those assets to the extent of the Government revenue claimed by the plaintiff. On these grounds, I am of opinion that the principal sudder ameen was quite right in deciding that they were liable, and that the plaintiff was right in having recourse to them for the payment of the whole of his demand. On the third point it is evident that the farmers have not paid the Government revenue for 1241 F. to the proprietors. They have not even pleaded payment.

Under these circumstances I dismiss the appeal, and confirm the decree, awarding the payment of the costs of the appeal from the appellants.

THE 30TH MARCH 1849.

Appeal from a decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 13th March 1848.

Chowdhree Rafeeooddeen Hossein and others, (Plaintiffs,) Appellants,

versus

Mohur Singh, Jograj Singh, and others, (Defendants,) Respondents.

THIS is a suit for possession of 24 beegahs 8 cottahs of land, which plaintiffs asserted, belong to mouzah Roopuspore, their estate, and of which defendants obtained wrongful possession by removing further

eastward the western boundary of a disputed plot of ground decreed to them in a former suit in which they were plaintiffs, with the appropriated proceeds thereof, interest, &c.

Plaintiffs pleaded that whereas 62 beegahs only were awarded by the former decree exclusive of 18 beegahs, the ratio of another sharer, the defendants, besides the 62 beegahs awarded to them, and the 18 beegahs aforesaid, surreptitiously, by the means already mentioned, obtained, in addition, possession of the lands now claimed, making a total of 104 beegahs 8 c., as the revenue survey maps clearly shewed. Among other reasons for dismissing this suit, the principal sudder ameen observes:—

"On the application of both parties, I visited the lands in litigation on the 1st March 1848, and, in order to test the truth of the plaintiffs' allegation, had the parcel of the 80 beegahs in question measured in the presence of both parties and their putwarees. This result shewed that it contained 73 beegahs, 12 c., 18 d., only, and although there were no marks whatever visible to the westward of the pyne, or reservoir, which forms the western boundary of the 80 beegahs, yet the lands pointed out to me as the site of the old pyne were also measured and found to be 3 beegahs, 4 c., 16 d., and those occupied by the bed of the pyne in which water was, measured 1 beegah, 12 c., 4 d., making a total of 4 beegahs, 17 c. Now, even if this quantity of land be added to the abovementioned 73 beegahs, 12 c., 18 d., it will only make an aggregate of 78 beegahs, 9 c., 18 d., being still less than 80 beegahs."

Furtheron the principal sudder ameen thus observes:—"Furthermore, on the conclusion of the measurement, I offered to attend to any objections which the parties might feel inclined to make, declaring to them that, as I was on the spot, the matter could be satisfactorily adjusted, but none was made: indeed, so far from their making any objection, they and their putwarees and vakeels attested the measurement, papers with their signatures in token of acquiescence. Consequently, the objections subsequently made by the plaintiffs in their petition of the 2nd instant are absurd and unworthy of attention."

The appellants urge that the principal sudder ameen did not visit all the lands, viz. those of which defendants obtained possession under the decree together with those which they surreptitiously acquired by removing the boundary; and the ameen, or person making the measurement, did not include the whole in his measurement; secondly, that the measurement being made by a person not in the employ of Government or a professional ameen acquainted with the business, is faulty, as appears, they assert, on the face of the papers, in which the calculations of the contents of the fields or plots from the dimensions given are erroneous; thirdly, that the admissions of defendants in their answer corroborate the plaintiffs' allegations, inasmuch as they admit having in their possession a greater quantity of land than the decree awarded to them; fourthly, that the principal

sudder ameen ought to have compared the lands with the map of Neamut Alli Khan, the sudder ameen, who passed the decree, and according to which map possession was given on the lands. Appellants also refer to their petition, and a report of the nazir, dated 3rd June 1840, of the enquiry which he had been deputed to make in consequence, and to the proceedings of the additional principal sudder ameen of the 10th September 1838, as shewing that the encroachments of the defendants had been the subject of enquiry, and had been ascertained in the course of execution of the former decree.

I do not find that these documents relate to precisely the same matter. They both mention indeed that the features of the spot had been altered, but while the roobakaree makes mention of 12 beegahs in excess of the 80 beegahs in question, and of an attempt of the decree-holder to include a piece of land to the south as disputed, the report referred to merely states that the decree-holders had thrown back the mound eastward, to the distance of in some places 4 " bans," in some places 6 " bans," encroaching thus on the lands of the opposite side to the extent of 13 c., 19 d. The plea of the appellants is that by throwing this mound little by little, further and further back to the eastward, respondents are now in possession of 24 beegahs, 8 c., in excess of what was formerly disputed and decreed to them. The point for decision then is whether this statement has been proved. In order to prove it, appellants ought to shew how far back, *i. e.*, westward from the present eastern boundary of Jalalpore, the original boundary, viz. the road and pyne, stood before the encroachments of the defendants commenced. I do not perceive that they have at all succeeded in doing this; and perhaps the only way of ascertaining it, possible under the circumstances, was that adopted by the principal sudder ameen, viz. to measure the extent of the land now disputed with that formerly disputed as pointed out by the parties themselves. If on actual measurement it had turned out that defendants were in possession of more than 80 beegahs, the inference would have been that defendants had encroached to that extent. The result of the measurement, however, is quite the other way. The objections to the measurement, I think,—under the circumstances stated by the principal sudder ameen, of there having been no objection urged while he remained on the spot, and as I have myself found the calculations correct,—litigious and groundless. The third plea is an incorrect representation of the pleading of the defendants, and the fourth is frivolous, as there is nothing to shew that possession was given according to the map in question, and had there been any thing, I do not think it was at all calculated to help the principal sudder ameen to a right decision.

Under these circumstances, thinking the decision perfectly right and just, I hereby confirm it, and dismiss the appeal without calling on the respondents to reply.

ZILLAH PURNEAH.

PRESENT: D. PRINGLE, ESQ., JUDGE.

THE 27TH MARCH 1849.

Appeal No. 18 of 1845.

Principal Sudder Ameen, Moulvee Rooknooddeen.

Mahomed Feiz Buksh, (Defendant,) Appellant,

versus

Gobind Chund, (Plaintiff,) Respondent.

Mirza Uskurree—Vakeel for Appellant.

Seetul Chunder Rae and Bamachurn—Vakeels for Respondent.

THE respondent here sues to recover rupees 2,133-5-4 as advanced to appellant, on his bond dated the 31st Chyte 1238, and payable in two years, who, in reply, admits the bond, but alleges that the amount was repaid in full, from profits of farm, for which a lease was granted to respondent on the same date, for 1239 and 1240, in the name of Ram Dass, his dependant, who received a discharge accordingly for rents of these years. The suit, it is further urged, is barred by law of limitation. The respondent, in his replication, disclaiming connection with Ram Dass, pleads the entire absence of any reference to such assignment in the bond; the return of which, moreover, would have been required by appellant, before granting the discharge referred to. And as to the bar created by law of limitation, that the suit intermediately brought, had been struck off under Act XXIX. of 1841.

The principal sudder ameen, on grounds that the bond is admitted by appellant, and set-off for usufruct under lease, only now claimed, of which no mention is there found; by whom, moreover, the deed would have been certainly recovered, before granting such discharge for rents, gave award in respondent's favor.

In appeal, it is urged that respondent was surety, and the only party profiting by the said lease, the date of which, as that for payment of instalments, will be found to correspond throughout with those fixed in the bond; it is therefore prayed that additional evidence, of parties present when the deeds were executed, be admitted. This being granted, the evidence of two witnesses is here taken; who, though they speak to the connection between the transactions, give no specific testimony that could in any way invalidate the grounds of the decision given below; which was therefore affirmed. From

this order a special appeal was lodged, on the ground that, under Section 2, Act XXIX. of 1841, the respondent's suit was inadmissible; the period so claimed not being allowed to reckon in bar of its rejection.

JUDGMENT.

To this plea no answer being here made, it only remains on these grounds to give a decree for the appellant.

THE 28TH MARCH 1849.

Appeal No. 98 of 1848.

Moonsiff of Kusbah, Umjud Ali.

Domun and others, (Defendants,) Appellants,

versus

Heiat Mahommed, (Plaintiff,) Respondent.

Fuqeera Lal—Vakeel for Appellants.

Bamachurn—Vakeel for Respondent.

AN action for rupees 30-2, due on a bond. The respondent, plaintiff below, producing an instalment bond, given by appellants, dated the 19th Jeit 1249, for rupees 22; the last payable in Aughun 1251; who allowed judgment to go by default in the court below; now alleging, in appeal, that the claim originated in enmity on the part of the respondents, and that he was entirely ignorant of it until the decree had been passed against him.

JUDGMENT.

As it is found from the record, that proof as to service of the notice, was duly taken in the lower court, the objection of the appellants is untenable; whose appeal is therefore dismissed.

THE 28TH MARCH 1849.

Appeal No. 100 of 1848.

Moonsiff of Nathpore, Mr. Pennington.

Rajib Lochun, (Defendant,) Appellant,

versus

Ram Sagur Pal, (Plaintiff,) Respondent.

Seetul Chund and Mirza Ahmed—Vakeels for Appellant.

Bamachurn and Gopee Mohun—Vakeels for Respondent.

THIS was an action by respondent, plaintiff below, against appellant, his gomashtah, for delivery of accounts, and payment of balance due to plaintiff: laid at rupees 282-7-6; who having set forth in his plaint, that it was his intention to sue separately for other

sums owing him by appellant, the moonsiff, in disregard of the provisions of the Circular Order of the 30th September 1847, finding the balance here claimed to be due in account, made award accordingly, on which ground, with others now adduced, the case having been appealed, it is remanded, that respondent here be nonsuited.

THE 28TH MARCH 1849.

Appeal No. 101 of 1848.

Moonsiff of Dhumdaha, Imdad Ali.

Mudhookoomr, (Defendant,) Appellant,

versus

Sham Rai, (Plaintiff,) Respondent.

Bamachurn—Vakeel for Appellant.

Fuquecra Lal—Vakeel for Respondent.

SUIT for value of crop, taken by the appellant, laid at rupees 54-4. The respondent there stating, that having obtained, in conjunction with other parties, a pottah of certain lands, from the farmer, Dowlut Chowdhree, from 1252 to 1256, inclusive, they were in occupation of these up to 1254; in which year, the appellant here, with connivance of the farmer, ousted them from 9 beegahs, in the 28 so held; and to cover this act of aggression, brought a summary suit against them before the deputy magistrate; in which having wholly failed, he was fined by that authority; the crop grown on 6 beegahs, 6 k., having in the interim been removed. The appellant, who is brother to the former lessee, there replying, that on his lease being transferred to the co-defendant, Dowlut Chowdhree, in 1252, the latter refused to receive rent at the rate previously taken, but finally, in 1253, admitted appellant to engage at the same. The respondent, he adds, only cultivated as his *addyadar*, the produce being equally divided; and what he got, being only his share so calculated. The co-defendant below, disclaiming any right of appellant to cultivate; and affirming the pottah given by him, to respondent and others. The moonsiff finds from a decree of the civil court, exhibited by respondent, that the appellant here, having there sued the said co-defendant, because of his ouster from the lands in dispute, the suit was struck off, because of his neglect to proceed, and never subsequently revived: while a kubooleeut produced by him, as taken from the respondent, is dated 1251; on which grounds and the support his claim derives from the award of the deputy magistrate, he decrees the amount against the appellant here, relieving the co-defendant, Dowlut Chowdhree.

In appeal, it is contended that the suit referred to was struck off because of its being adjusted; while the moonsiff should have ordered a local enquiry, to ascertain on what land the crop taken was grown.

JUDGMENT.

The grounds on which the moonsiff's award proceeds, are such as cannot now be impugned. The appellant, it is seen, is brother of the late farmer, who has thus been foiled in the attempt made to retain hold over that, which at the expiry of his lease he was bound to resign.

THE 28TH MARCH 1849.

Moonsiff of Dhumduha, Imdad Ali.

Appeals No. 102, 103, and 104.

Mudhookoomr, (Defendant,) Appellant, as above,

versus

Pran Ram, (Plaintiff,) Respondent, in the first,

Girdharee Rae, (Plaintiff,) Respondent, in the second,

Elahee Buksh, (Plaintiff,) Respondent, in the third.

IN these cases, the damages are laid at rupees 92-4, rupees 57-4-6, and rupees 37-2, respectively; the appellants being sued on the same account; and their history precisely similar. On which grounds the appeal in all three is dismissed.

THE 28TH MARCH 1849.

Appeal No. 52 of 1849.

Sudder Moonsiff, Mr. Noney.

Mussamut Rowjee, (Defendant,) Appellant,

versus

Bamachurn, (Plaintiff,) Respondent.

Fuqueera Lal—Vakeel for Appellant.
Seetulchund Rae—Vakeel for Respondent.

BOND debt, contracted by the deceased husband of the appellant; claim laid at rupees 159: who admits the bond, but pleads non-liability, because made by the deceased when in partnership with his brothers, who yet survive. No such connection being proved, and appellant having succeeded to the property of the deceased, a decree was given accordingly, by the moonsiff. In appeal, the joint liability of the brothers is again alleged.

JUDGMENT.

No such connection between the brothers, as is here contended for, being attempted to be established, and the bond entered into by the deceased alone, the appeal is dismissed.

THE 29TH MARCH 1849.

Appeal No. 106 of 1848.

Moonsiff of Kusbah, Umjud Ali.

Babooram, (Defendant,) Appellant,

versus

Jeynarain (Plaintiff,) Respondent.

Gobind Chund— Vakeel for Appellant.

Fuqueera Lal— Vakeel for Respondent.

ACTION for rupees 24, value of three bullocks sold to appellant; who denies the purchase, and contends that entry thereof would be found in the hath bhye, moreover, that respondent had no right to sell the cattle, as they had never been acquired, as alleged, in liquidation of a debt from a third party. The moonsiff, finding on the evidence adduced, that the cattle were duly transferred to appellant, and the price promised to be paid in ten days, decrees the principal here claimed. In appeal, the plea of the absence of any writing, either given by appellant, or made in the hath bhye, is revived.

JUDGMENT.

The purchase of the cattle being clearly established, and the heirs of the party from whom these are said by respondent to have been acquired, not appearing to contest his right so to dispose of them, the objections of the appellant are futile; and the appeal therefore dismissed.

THE 29TH MARCH 1849.

Appeal No. 107 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Lall Singh, (Defendant,) Appellant,

versus

Debi Koomr, (Plaintiff,) Respondent.

Brij Lal Singh— Vakeel for Appellant.

Muneeroodeen Ahmed— Vakeel for Respondent.

ACTION of damages, for illegal distraint and sale of plough bullocks and a cow, of respondent. The appellant alleging, that there was a balance of rupees 46, 5 annas due, on lands in occupation of respondent; who, in replication, pleads that he had surrendered the lands formerly held by him, so could not be made liable. The moonsiff finds it established by the witnesses of the respondent, that he had formally resigned his lands; so that the attachment was not only in this case illegal, but that of the plough bullocks in no case justifiable. The witnesses of the appellant, there denying all know-

ledge of the matter. Who therefore awards damages as claimed, at twofold the value of the cattle. In appeal, it is urged that the putwary alone could speak to the fact of respondent's occupation of the lands on which the balance had accrued, who had never resigned these as was alleged by him

JUDGMENT.

The respondent's surrender of the lands being clearly established, there exists no ground for interfering with the judgment here given.

THE 29TH MARCH 1849.

Appeal No. 109 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Sheikh Tharoo and others, (Defendants,) Appellants,

versus

Janoo, (Plaintiff,) Respondent.

Mukbool Lal—Vakeel for Appellants.

Mirza Ahmud—Vakeel for Respondent.

CLAIM for rupees 11-4, value of crop taken by appellant. The respondent there stating, that he had a pottah for beegahs 4, 11 cottahs, in which this was raised, from 1252 to 1254; the appellant in 1254 forcibly appropriating the entire produce of beegahs 3, withholding respondent's moiety to which he was entitled; on whom a fine was accordingly imposed by the deputy magistrate. The appellant replying, that he held this land under a separate pottah. The moonsiff finds from evidence of witnesses, including the putwary, from receipts produced by respondent, and order of the deputy magistrate, consequent on the trespass, that the land was in respondent's cultivation, and the crop therefore unduly appropriated by the appellant. Of four witnesses brought to prove whose occupation of this land one knows nothing, and the evidence of the others is conflicting. In appeal, it is urged that the putwary was dead, who is stated to have so deposed in the lower court, and that without a local enquiry the truth could not be ascertained. The respondent here contending, that no such objection to the putwary's evidence was taken before the moonsiff; who there delivered it in person; the application for deputation of an ameen having been rejected, as wholly uncalled for.

JUDGMENT.

The putwary's evidence, to which no such objection can at this stage be raised, is conclusive as to the land in dispute being included in the pottah of the respondent; whose title to a moiety of the crop so appropriated, is thus established; as it is, no less clearly, by the additional proofs cited in the moonsiff's decree. The appeal from which is therefore dismissed.

THE 29TH MARCH 1849.

Appeal No. 112 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Rampershad, (Defendant,) Appellant,

versus

Mohunt Ram Surn, (Plaintiff,) Respondent.

Fuqueera Lal—Vakeel for Appellant.

Bama Churn—Vakeel for Respondent.

CLAIM, for rupees 3, value of bamboos, which respondent states were delivered to appellant, who promised payment as above; who replies that, being tuhseeldar for collection of rents in respondent's resumed lands, he had given him credit for a corresponding amount under this head; a plea properly rejected by the moonsiff, as it was not alleged that the bamboos were taken for the use of Government; and which being revived in appeal, is now finally dismissed.

THE 29TH MARCH 1849.

Appeal No. 113 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Rampershad, (Defendant,) Appellant,

versus

Mohunt Ram Surn Das, (Plaintiff,) Respondent.

Fuqueera Lal—Vakeel for Appellant.

Bama Churn—Vakeel for Respondent.

CLAIM, for rupees 33-3, rents collected by appellant. The respondent, laying claim to these, brought this action against the appellant who collected, and the ryut paying the same. The former alleging, that the amount was collected by him as tuhseeldar of the mehal, which had been resumed. The co-defendant, that he was compelled to pay this to the other, though he cultivated under respondent's pottah; who, in his replication, there denies that this land had ever been resumed, and calls upon appellant for the authority under which he acted.

The moonsiff, in the absence of proof of the land's attachment by Government, awards the amount so collected by appellant, relieving the co-defendant.

In appeal, it is contended that Government was to be made a party. When the vakeel of the appellant was asked to exhibit the purwanah or other authority for so including the Government, who replied, that his client was in jail undergoing a sentence for embezzlement of Government moneys.

JUDGMENT.

The decision here turns, on the mehal being attached or otherwise; of which the moonsiff finds no proof to exist; and the appellant's vakeel here failing to produce this, the appeal is dismissed.

THE 29TH MARCH 1849.

No. 114 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Rampershad (Defendant,) Appellant,

versus

Mohunt Ram Surn Das (Plaintiff,) Respondent.

Fuqueera Lal—Vakeel for Appellant.

Bama Churn—Vakeel for Respondent.

CLAIM, for rupees 30-5-6, being value of grass purchased by appellant, who replies, that he duly paid for the same; but failing to bring any witnesses to prove it, the moonsiff decreed the amount. In appeal, it is urged that the omission to take out a subpœna was because of appellant's being in prison.

JUDGMENT.

As the appellant had due notice of this suit being pending, and might, through an agent, have taken the necessary steps to defend it, such plea is now inadmissible; whose appeal is accordingly dismissed.

THE 29TH MARCH 1849.

Appeal No. 115 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Rampershad (Defendant,) Appellant,

versus

Mohunt Ram Surn Das, (Plaintiff,) Respondent.

Fuqueera Lal—Vakeel for Appellant.

Bama Churn—Vakeel for Respondent.

CLAIM, for rupees 2, value of planks. The respondent stating, that appellant had purchased eleven planks, for rupees 8-7-6; who admits that of three planks, for rupees 2, only; for which he paid. Of this however bringing no proof, while that to purchase of eleven is deemed insufficient, the value of two is awarded by the moonsiff. In appeal, the plea of inability to defend the suit from being in jail, is here likewise urged; which for the same reason is now overruled, and the appeal dismissed.

THE 29TH MARCH 1849.

Appeal No. 116 of 1848.

Moonsiff of Dhumduha, Imdad Ali.

Rampershad (Defendant,) Appellant,

versus

Mohunt Ram Surn Das, (Plaintiff,) Respondent.

Fuqueera Lal— Vakeel for Appellant.

Bama Churn— Vakeel for Respondent.

CLAIM, for rupees 30-6, balance of rent, as due by Gungaram Das, brother of appellant, cultivating the same, who replied, that, understanding the lands were resumed, he had not cultivated; but no evidence as to their attachment being adduced, and their cultivation by him satisfactorily established, an award was made accordingly. In appeal, it is urged that the appellant is the party really interested, who therefore appears in this capacity.

JUDGMENT.

As the name of the appellant does not appear in the original suit, he cannot prosecute an appeal in the same; which is therefore dismissed.

THE 30TH MARCH 1849.

Appeal No. 108 of 1848.

Moonsiff of Kusbah, Umjud Ali.

Hussimoolah, (Defendant,) Appellant,

versus

Meajan, (Plaintiff,) Respondent.

Feizoolah— Vakeel for Appellant.

AN action of bond debt, for rupees 26-13-5, payable in grain. The claim being admitted, but half an anna in the rupee, it is alleged, charged on the loan; of which proof is forthcoming. The moonsiff, on grounds that the appellant's witnesses did not attend, made award in respondent's favor. In appeal, it is contended that appellant had used all due diligence, and it was for the court to compel attendance of witnesses.

JUDGMENT.

It is found that though the effects of the said witnesses were attached, no further steps were taken for obtaining their evidence. The case is therefore remanded, that the moonsiff adopt such measures for this purpose as are authorized by Act XVII. of 1845.

THE 30TH MARCH 1849.

Appeal No. 110 of 1848.

Officiating Sudder Moonsiff, Itrut Hossein.

Dhoorup Chowdhree, (Defendant,) Appellant,

versus

N. Devain, (Plaintiff,) Respondent.

Bama Churn—Vakeel for Appellant.

Seetul Chund and Fuqueera Lal—Vakeels for Respondent.

CLAIM of rupees 20, balance due on a bond, executed by appellant for rupees 100, the 5th June 1843, being amount advanced for indigo seed; who pleads delivery of eleven maunds accordingly; respondent admitting that of seven maunds, for which credit had been given on a different account, as shewn in the following number. The moonsiff, finding seven maunds credited in the factory books, carries it to account of the claim here made; and as appellant brings no proof to delivery in excess of this, gives award for the balance in respondent's favor. In appeal, it is averred that the full quantity was delivered; respondent's intention to defraud appellant being evident, from his withholding the above credit.

JUDGMENT.

It being found, in the case following, that the respondent had a separate claim against appellant, to which value so received might be credited, which suit was only brought, because of its credit to this account, and appellant leaving it to the books to establish this, his appeal here is dismissed.

THE 30TH MARCH 1849.

Sudder Moonsiff, Mr. Noney.

Appeal No. 160 of 1848.

Dhoorup Chowdhree, (Defendant,) Appellant,

versus

N. Devain, (Plaintiff,) Respondent.

No. 190 of 1848.

N. Devain, (Plaintiff,) Appellant,

versus

Dhoorup Chowdhree, (Defendant,) Respondent.

Bama Churn—Vakeel for Appellant.

Seetul Chund and Fuqueera Lal—Vakeels for Respondent.

FOR recovery of rupees 178, balance due on engagement to cultivate indigo. This action was brought by the respondent in the

former number, who is appellant in the latter. The case is thus stated by the sudder moonsiff. "The plaintiff states that, on the 8th February 1846, defendant received an advance of 64 rupees, 11 annas, to cultivate 40 beegahs of indigo, that he only sowed 6 beegahs 8 cottahs, taking away from the factory three maunds of seed, and delivered plant to the value of rupees 4-2-6, who therefore sues to recover rupees 178-11-6. Defendant acknowledges the advance, and pleads that he sowed the 40 beegahs, but all the plant was not cut and taken to the factory, because the water machine was broken. Plaintiff, in reply, states, although the water machine was broken, he worked off the plant at Kajah and Mussooreah. It appears from the enquiry of the ameen, and evidence of witnesses of both parties, that all the 40 beegahs was sown, but from the breaking of the machine the plant was not cut, and taken to the factory. The plea of plaintiff, that he worked off his plant at Kajah and Mussooreah, is not to be believed, because these factories were required by their owners for manufacturing their plant. The present claim is partly for principal and interest, and partly for damages; but plaintiff is not entitled to damages, only interest can be allowed on the balance, as also the price of three maunds of seed."

From this decision both parties have appealed. The appellant in the former number, because the loss, as alleged, was owing solely to respondent's laches. The respondent there, in the latter, on the ground that the verdict is opposed to evidence, and because of abatement unjustly made by the moonsiff.

JUDGMENT.

The moonsiff it is seen finds the claim for breach of contract unfounded; notwithstanding which he proceeds to award the amount with abatement on the damages claimed. The plaintiff had admitted the water-works to be out of order, but established by evidence of witnesses, agreed to by both parties, that to remedy this he sent the plant to be worked off at the adjoining factories; which the moonsiff deems incredible, being, however, it would seem, the most natural course he could adopt. The plaintiff had too much at stake, to permit the plant to rot on the ground if the means for its manufacture were within reach, which is nowhere denied by the defendant, whose witnesses are ryuts of Kajah factory, their cultivation adjoining his own; and who depose, not only to the cultivation of beegahs 40, as contracted for, by the defendant, but to 50 beegahs, of good plant so raised, thus going to destruction, notwithstanding its proximity to Kajah as aforesaid. But even admitting a portion of this, from such cause, to have remained on the ground, it is hardly to be credited that a ryut, who had thus raised 50 beegahs of good plant, on a contract for 40 beegahs only, would be so pursued for damages by the factory. And whereas the moonsiff states that the cultivation of beegahs 40, is

established by the witnesses of both parties, it appears from the record that no witness of the plaintiff ever so stated, who has averred, that the plant delivered did not exceed the produce of beegahs 6, 8 cottahs; whose witnesses, while they confirm this, admit that more land was cultivated, but the produce falling short, or being inferior, from neglect to prepare, and afterwards weed the ground. The factory mohurrir who measured it, stating, that beegahs 9 12 kottahs was lost from the latter cause, and that in beegahs 7, 14 cottahs its quality was, owing to the former, of the third class only; while 11 beegahs was left untouched. So that in beegahs 40, as contracted to be cultivated by the defendant, only beegahs 7, 14 cottahs were so prepared as to give produce; beegahs 9, 12 cottahs being lost from neglect to weed, as specially provided for in the agreement; the remainder, or beegahs 22, 14 cottahs, left fallow. On which grounds, I make award as follows, that credit be given the defendant for 7 beegahs, 14 cottahs in account: a penalty of two fold the advance, being awarded on 9 beegahs 12 cottahs; and of three fold its amount, ratably apportioned, on 22 beegahs 14 cottahs. The total sum thus awarded, being rupees 139-6-9; in amendment of that made by the moonsiff. The costs to follow this award.

TH 30TH MARCH 1849.

Appeal No. 365 of 1848.

Sudder Moonsiff, Mr. Noney.

Dhoorup Chowdhree, (Defendant,) Appellant,

versus

N. Devain, (Plaintiff,) Respondent.

Bama Churn Vakeel for Appellant.

Seetul Chund and Fuqueera Lal—Vakeels for Respondent.

CLAIM, for rupees 28, 9 annas, due on bond, given by appellant for rupees 18-13, on the 27th November 1848, payable in July 1846, which appellant denies having made; but its execution being established by subscribing witnesses, the amount is decreed in full by the moonsiff. In appeal it is contended, that such bond would retire any of a previous date; as admitted by appellant to have been given under the preceding number.

JUDGMENT.

The bond in this case was for cash; that under the preceding number, for delivery of indigo seed. Its repudiation, therefore, on such ground, by the appellant, is inadmissible; whose appeal is accordingly dismissed.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 5TH MARCH 1849.

No. 7 of 1848.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 25th January 1848.

Inderchand Baboo, for self and as guardian of Gobindchand Baboo, minor, and Bindraj Baboo their gomashtah, (Plaintiffs,) Appellants,

versus

A, Gilson R. French, of Bansbareah factory; *B,* Charles Newcomen, *C,* Albert Larpent, and *D,* John Beckwith, members of the late firm of Cockerell and Co., Insolvents, (Defendants,) Respondents.

E, Poolinchunder Chuckerbuttee, and *F,* Kishenchunder Chuckerbuttee, (Defendants in the original suit.)

THE appellants instituted this suit on the 2nd December 1846, to recover Rupees 1,500, with interest and *hoondian,* (22-8,) paid by the *gomashtah* Bindraj, to E and F, on a draft, of which A was the alleged maker and drawer on the house of Cockerell and Co., of which B, C and D were partners. On the draft being presented for payment, Cockerell and Co. refused payment, suspecting it to be a forgery. A and E only filed answers in the principal sudder ameen's court. A denied having given the draft, or that F was his servant—E had been, but had run away. E also denied and set up an *alibi* that he was then at Kishnuggur, adding he had before given up the service of A of his *own* accord. The principal sudder ameen gave a decree against E and F, exempting the other defendants. Being dissatisfied with his decision the appellants appeal, and insist on the liability of the other defendants exempted by the principal sudder ameen, and have made them respondents. The appeal was admitted on the 26th January last, and appellants directed to serve notice on the respondents, but only A has been served with one, who, in reply to the *woojoohat,* again repeats what he said in his answer,—denied all knowledge of F, and that E had left his service before. He also denied having received back the draft from Cockerell and Co.

As proceedings relating to this draft had been held in the *foujdarry,* the *nuthee* was sent for, and the following letter (or copy) transmitted by the chief magistrate of Calcutta, I find on the record:

Calcutta, 18*th February* 1846.

G. R. French, Esq.,

Bansbareah Factory, Rajshahye viâ *Surdah.*

Dear Sir,—We are in receipt of your letter of the 16th instant. We have given notice of the bank-notes to the bank, and have directed a notice to be inserted in the *Englishman, Hurkaru,* and *Star,* of which we enclose a copy. The case does not lie here: the party to proceed is the kooty-wallah, and perhaps you will assist him to carry it out—for this purpose we sent you the enclosed, the letter which contained the cheque, and also the latter document. The police will aid in the matter when any thing can be done here.

Dear Sir, &c.,

(Signed) Cockerell and Co.

(True copy,)

(Signed) L. DaCosta.

From this it would appear that the draft was presented to Cockerell and Co., and, if *their* statement is to be relied upon, returned to French, and if not received by him there has been some foul play in the post office, and it appears essential for the ends of justice that it should be traced out, and if traceable to French, he must be held liable for the acts of E and F, as the draft was in his name, and the money was paid on his account to E and F, the former of whom was once in his service, and the latter cousin of E. The case, therefore, must be remanded for further investigation, and brought on the judge's file, as Europeans may have to be examined on interrogatories, and the principal sudder ameen does not understand English. The value of the stamp, on which the petition of appeal is written, to be returned to the appellants, and the usual order as regards costs.

The 6th March 1849.

No. 14 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 25*th June* 1847.

Nub Kant Turrufdar and Bharut Chunder Turrufdar, (Defendants,) Appellants,

versus

Syud Amjud Allee, (Plaintiff,) Respondent.

The respondent institutes this suit on the 15th June 1846, to recover possession of 2 beegahs 7 cottahs of land, with *mesne* profits from 1250 to Jeit 1253 B. S., alleging it was included in his *ijarah,* or farm, obtained from the collector of a *khas mahal* belonging to Government. The defendants (appellants) claimed the land as

lakhiraj; and that it did not belong to Government, nor was it included in the *khas mahal*. On a reference to the collector, that officer reported there was no *taidad*, or register, of the land being *lakhiraj*, on the contrary it was *mal* and included in the *khas mahal* farmed out to the plaintiff. On this the principal sudder ameen gave the plaintiff a decree, from which the appellants appeal, again insisting the land was *lakhiraj*. The appeal was admitted on the 17th May last, with reference to the decision of the Sudder Court in the case of Birjonath Baboo *versus* Rughoonath Ojha, (p. 231, S. D. A. Reports, vol. V.,) but on going through the case this does not appear to be one *semble*. The only proof that the appellant has of the lands being *lakhiraj*, are some canoongoe's papers, in which the identity of the land cannot be discovered, and which of themselves no court could admit as proof of the land being *lakhiraj*, when the revenue authorities ruled it was *mal*. On these grounds, seeing no reason for disturbing the principal sudder ameen's decision, the same is affirmed, and the appeal dismissed with costs.

THE 6TH MARCH 1849.

No. 15 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 24th June 1847.

Nocowree Dasseah and Bhugbuttee Dasseah, (Plaintiffs,) Appellants,

versus

Sheebnath Sandeal, (Defendant,) Respondent.

THE appellants sued to recover possession of certain lands as belonging to the *zemindaree*, Badea Zameerpore, chuk Sellimpore. The respondent denied that the lands belonged to them, but was included in his *putnee*, being a portion of mouzah Salcowree. The principal sudder ameen, with reference to an Act IV. decision affirmed in appeal, and the *nuksha* prepared by an ameen deputed by him to make a local enquiry, dismissed the claim, as the appellant had adduced no proof to shew that the land ever belonged to Sellimpore. Against this decision the appellants appeal, impugning the ameen's report, and accusing him of changing the *nuksha*, or plan, made of the ground on the spot, and which the plaintiffs' (appellants') moktars had signed. The appeal was admitted on the 17th May last, and the moonsiff of Chowgong was appointed an arbitrator, to report if the *nuksha* was a fair representation of the place in dispute, and if there was any reason to suspect there had been any collusion on the part of the ameen appointed by the principal sudder ameen. He accordingly visited the spot, and reported, after examining some witnesses, that the *nuksha* did not correspond with the land of Sellimpore on the north; no distinct opinion is given to whom the lands belong. The

kubooleeut and auction papers connected with sale of the *putnee*, by no means tend to clear up the respondent's right to the land. There is nothing, in fact, but the summary award passed under Act IV. of 1840. The place no doubt remained long fallow, and thus the relative rights of the neighbouring zemindars remained undefined; and, being a boundary dispute, the court is fully competent to fix one. I therefore, in amendment of the principal sudder ameen's decision, fix one as laid down in the moonsiff's *nuksha*, from a tree on the east side to one on the west side, or from the nullah on the east to the nullah on the west, which boundary the moonsiff will receive directions to mark out. The appeal is accordingly decreed with mesne costs on the portion now adjuged to the appellants, from the date of the suit being instituted, and the costs of the parties in this appeal are made payable by them respectively.

THE 6TH MARCH 1849.

No. 25 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 31*st August* 1847.

Deputy Collector of Pubna, on the part of Hurreepershad Chowdhree and Neelmadhub Ghose, minors, (Defendant,) Appellant,

versus

Anund Moee Dasseah, (Plaintiff,) Respondent,

CLAIM, for rupees 2,773-5-4.

This suit was instituted by the respondent to recover the above amount, alleged to have been lent on bond by respondent's father to certain parties acting as guardians for the minor defendants, whose estates were subsequently brought under the Court of Wards; and the principal sudder ameen gave a decree in favor of the plaintiff with costs.

Against this decision the deputy collector of Pubna, in behalf of the minors, appeals. There are three pleas: first, that the respondent being a childless widow, according to the *shasters* and a *bewasta* of the *pundit* of the division given in the case noted in the margin, decided by this court, could not sue to recover the debt; second, a person by name Bykunth, talookdar, and brother of the respondent's father, had a lien or claim to the amount alleged to have been lent on the bond; third, that the principal sudder ameen had decreed that the estates of the minors were liable for the amount due under the bond, instead of making the parties (Rada Monee and Sarsuttee) to it, personally liable. The appeal was admitted on the 27th January last, and the *pundit* of the division was again called upon to give a *bewasta*, and to state if respondent could

Hurrea Bewa *versus* Rajah Anund Nath Roy, decided on the 29th Nov. 1843.

or could not sue. He has replied in the affirmative, as her husband was alive when her father demised, and therefore she might have had progeny or heirs herself; that in Hurrea Bewa's case, she was not married when her father died, that she had a brother during whose life she married, and afterwards became a childless widow, hence she could not claim as heir to her father. This effectually disposes of the first plea. With regard to the second, I remark that Bykunth talookdar never came forward in the principal sudder ameen's court, or put in any claim in this. The bond does not run in his name; and as the appellant's vakeel now states a decree has been obtained against him for rent due on account of the minors' estate held by him in farm, his holding back may be thus accounted for; but again, as respondent's father was security for the rent of the farm, this will not affect the joint liability of the farmer and the surety's heir (i. e., respondent.) With regard to the third plea, the parties to the bond were the *natural* guardians of the minors, one the grandmother of Joynath Singh and the other the mother of Neelmadhub, and it may be inferred the debt was incurred for the benefit of their wards, and therefore from the estates or from the profits of the estates the debt must be liquidated, and there was nothing unjust, in my opinion, in decreeing against the estates. On these grounds I see no reason for disturbing the principal sudder ameen's decision, and therefore dismiss the appeal with costs.

THE 6TH MARCH 1849.

No. 28 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 11*th September* 1847.

The Collector of Rajshahye, on the part of Personno Narayun Roy, Srees Narayun Roy, and Parus Narayun Roy, minors, (Defendant,) Appellant,

versus

Sookdeb Talinghea, (Plaintiff,) Respondent.

CLAIM, for rupees 1,210-12.

This is also a suit under a bond against the heirs of a zemindar, whose estates have been brought under the Court of Wards, and who were sued through their guardian, the collector being also made a defendant; and the principal sudder ameen gave the plaintiff a decree *exparte.* The collector, in his court, was the only person who filed an answer, and objected to being made a defendant as the debt had been incurred before the estate came under the Court of Wards, and as the minors had a guardian, he could be sued on their behalf, and had authority to plead to the suit. He therefore prayed that the plaintiff, for unnecessarily making him a defen-

dant, should be nonsuited. On the back of this answer the principal sudder ameen ordered that, if the plaintiff *chose,* he could file a reply.

The present appeal by the collector is not against the merits of the case, but on the ground of his being wrongly and unnecessarily made a defendant, and though he pleaded to this effect, the principal sudder ameen had totally overlooked his objection, and recorded no opinion thereon. The decree was read on the 25th January last, and as I can find no cause shewn for making the appellant defendant, the case must be remanded to the principal sudder ameen to dispose of this objection. The way he left it optional with the plaintiff to reply, was, to say the least of it, not very courteous to the collector, neither was it such an order as by Section 5, Regulation IV. of 1793, he should have passed: he ought to have distinctly called upon the plaintiff to reply to the collector's plea as contained in his answer to the suit, and have decided whether he was not properly made a co-defendant. He will now dispose of this plea as above indicated. The value of the stamp on which the petition of appeal is written, to be returned to the appellant, and the costs of this appeal, and also those of the appellant; in the lower court, will be adjudged against the party, *i. e.* plaintiff, or the present appellant.

THE 12TH MARCH 1849.

Appeals from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen.

No. 29 of 1847.

Huro Soondree Goopta, widow of Gree Gobind Sein, deceased, (Plaintiff,) Appellant,

versus

Nubo Gobind Sein, Mohun Gobind Sein, and Dyamoee Goopta, widow of Ram Gobind Sein, deceased, (Defendants,) Respondents.

No. 30 of 1847.

Nubo Gobind Sein, aforesaid, (Defendant,) Appellant,

versus

Huro Soondree Goopta, aforesaid, (Plaintiff,) Respondent.

THESE appeals are against one and the same decision of the principal sudder ameen, adjudging the appellant in case No. 29, Huro Soondree Goopta, entitled to arrears of maintenance at 15 rupees *per mensem,* from the month of Cheit 1251 to the 14th Poos 1253 B. S., and prospectively at that rate to be paid to her by her brother-in-law, Nubo Gobind Sein, appellant in case No. 30.

The amount of maintenance claimed, was 30 rupees *per mensem,* the arrears being calculated at that rate, added to which was one year's maintenance at the same rate, the total sum claimed being

rupees 1,044, and in consequence of only half being decreed, the plaintiff has appealed, and the defendant, Nubo Gobind, because the plaintiff had during his father's life time agreed to accept in lieu of maintenance a *tunkha,* or allowance of 2 rupees *per mensem,* which had been regularly paid to her by her father-in-law from 1247 to the end of 1251 B. S., that, after his father's death, the plaintiff, instigated by Mohun Gobind, (who had a share in the estates,) refused to take the allowance which he offered to pay, and instituted this suit. The appeals were both admitted on the 25th of January last, and after reading the whole of the evidence *pro* and *con,* I find that three witnesses brought forward by the plaintiff prove that the estates of Gunga Narayun were worth from 3,000 to 4,000 *rupees per annum;* that the plaintiff's husband, Gree Gobind, died before her father, as did Ram Gobind, the husband of Dyamoee Goopta. None of these witnesses say a word about the allowance or rate of maintenance received by the plaintiff during the life time of Gunga Narayun, and only one of them can read or write. On the other hand, four witnesses brought forward by the defendant Nubo Gobind, all of whom appear to be respectable, depose to the plaintiff accepting a fixed allowance of 2 *rupees per mensem* from Gunga Narayun in 1247 B. S., and who used to send her female apparel and *pershaud* (food prepared for the household gods, and sufficient for the diet of one person); that plaintiff always expressed her satisfaction at this allowance, which was paid by an order on the *naib,* Peetumber Mitter, to be charged against the collections made from a village called Calcapore; and a document to this effect has been filed by the defendant, Nubo Gobind. The amount of maintenance to a Hindoo widow must bear some relation to the property, and be calculated with reference to the situation of the parties, and the means of the party making the allowance, (page 441, Morley's Digest, vol. I,) but on what *data* 15 rupees has been fixed as the amount by the principal sudder ameen, I cannot discover. The plaintiff, by the death of her father-in-law, was not placed in a worse position than before, neither is there any reason for assuming that his death rendered her liable to greater expenses. That she of her own accord accepted a fixed allowance of 2 rupees *per mensem,* I consider to have been fully established, and this barred her present claim; and it would further appear from the evidence of the witnesses that, after refusing to take this allowance when tendered to her, she went to reside with her mother, thereby forfeiting all claim to maintenance (Oojulmunee Dasee *versus* Joy Gopal Chowdhree, Sudder Dewanny Adawlut Decisions for 1848, page 491.)

Under all the circumstances the suit appears to have been a vexatious one, brought at the instance of some one hostile to Nubo Gobind, and as the appeal is frivolous, it is therefore dismissed; and with regard to Nubo Gobind's appeal, the principal sudder ameen's decision must be amended, and the plaintiff declared only entitled

to receive 2 rupees *per mensem* from the month of Cheit 1251 B. S. to the date of suit, and at the same rate prospectively; but since she has sued for what she might have had without appealing to the courts at all, she must pay all her costs in both courts—Nubo Gobind, under all the circumstances, doing the same. His vakeels will, however, be entitled to receive fees at the rate his appeal was laid at, and those of the plaintiff only on the amount now decreed to their client.

THE 13TH MARCH 1849.

No. 2 of 1847.

Appeal from the decision of Moulvee Sadut Ullee, Sudder Ameen of Bauleah, dated the 19*th December* 1847.

A, Rooknee Debbeah and B, Lubunga Munee Dasseah, (Defendants,) Appellants,

versus

Socowrmunnee Dasseah, mother of Jeebunkishen Das, Rusheekanund Das, and Birjenderlall Das, deceased, (Plaintiffs,) Respondents.

THIS is a suit to succeed to ancestral property, which under an alleged deed of sale and an Act IV. decision had been made over to A. Her title was disputed by the respondent, who claimed the land as the widow of the nephew of the former proprietor. A claimed under a purchase made of B, who was grand-daughter of the same person or ancestor. It appeared that Gungaram, having died, was succeeded by his grandson, Jankee Nath, who also died a minor and was succeeded by his mother. On her death B, her daughter, claimed, and at the same time sold her claim to A. The respondent had several sons, who had all died in their infancy. The pundit of the division was therefore called upon to give a bewastah, who was entitled to succeed, the grand-daughter of Gungaram, or the respondent, mother of Jeebunkishen and others, and widow of Joykishen, nephew of Gungaram, and also, if either of these females could succeed, if they could sell the property. This order was passed on the 9th June last, and on the 17th the appellant B put other questions to the pundit, which were also sent to him for an exposition of the Hindo law. To both he has sent answers. To the questions put by the court he has replied, that the widow of Joykishen was entitled to succeed under the Hindoo law, and that no female had any authority to sell ancestral property. But if Premloll succeeded to his father, Gungaram, then his daughter Lubunga Munee's claim, was a good one. There is, however, nothing whatever to shew that Premloll ever succeeded, or ever survived Gungaram. This was a supposititious case, put by the appellant B's

vakeel, after the whole of the proceedings had been gone into and read on the 9th June. The Hindoo law of inheritance, therefore, as laid down by the pundit, in reply to the questions put by this court, pointing out the respondent as the heir at law, the decision of the sudder ameen must be affirmed, and the appeal dismissed with costs.

THE 13TH MARCH 1849.

No. 17 of 1847.

Appeal from the decision of Moulvee Sadut Ullee, Sudder Ameen of Bauleah, dated the 28th September 1847.

Kalee Soondree Chowdrain, (Defendant,) Appellant,

versus

Bawool Chunder Paul, (Plaintiff,) Respondent.

THIS was a claim to 82 *beegahs* of land,—the respondent suing for possession of the same as belonging to her *putnee talook* and attached to the village of Madai Ghuree,—the defendant (appellant) claiming it as forming part of her zemindaree and attached to the village of Syudpore. The plaint sets forth that, under an Act IV. decision, 72 *beegahs* had been made over to the defendant, and who, on the strength of this decree, had afterwards ejected plaintiff of 15 beegahs, 12 of which had, on the Act IV. case being disposed of, been made over to him, the plaintiff. The sudder ameen, after appointing two ameens to make a local investigation, on the report of the second, and *nuksha*, or plan, sent in by him, held that a *jangal*, or raised path, was the boundary; the lands to the east belonging to the plaintiff, and those to the west to the defendant, and as the land in dispute was to the east, the plaintiff was entitled to it. He, therefore, on this report and the canoongoe's papers, decreed for the plaintiff.

The appellant appeals against this decision, insisting that the land belonged to Syudpore and not Madai Ghuree; that the witnesses, examined by the ameen gave conflicting testimony, while hers (appellant's) were consistent, and had deposed that both herself and her husband had been seised of the land for years; and she also added that there was collusion between ameens and the respondent, and though she had constantly prayed that the moonsiff of Bhowannygunge might investigate and report to whom the land belonged, the sudder ameen had taken no notice of her application. The appeal was admitted on the 1st November last, and all the necessary papers were sent to the moonsiff of Bhowannygunge to report, after visiting the spot, if there is any injustice or wrong done by the decree passed. He accordingly proceeded to the spot and made a *nuksha*, reporting that the first ameen's *nuksha* did not correspond with the land in dispute or boundaries thereof, but that the second ameen's did, and it

was also borne out by the canoongoe's papers of 1820 A. D. Such being the case, I see no reason for disturbing the sudder ameen's decision, which is therefore affirmed, and the appeal dismissed with costs.

THE 14TH MARCH 1849.

No. 45 of 1848.

Appeal from the decision of Moulvee Moojeebul Rohman, Moonsiff of Kheytooparrah, dated the 11*th March* 1848.

Sahibanee Bewah, mother and guardian of Zumeer Sheikh and Sumeer Sheikh, minors, (Defendant,) Appellant,

versus

Sheikh Bahadoor Ullee, burkundauz, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover 15 rupees, with interest, alleged to have been lent on bond on the 10th Bysack 1254 B. S., to two persons by name Zumeer and Sumeer Sheikh, and the defendants not attending, the moonsiff gave the plaintiff a decree *exparte*. Against this decision the appellant has appealed, pleading that the defendants, Zumeer and Sumeer, were her sons and minors, and knew nothing of the suit before the same was decided. The appeal was admitted on the 16th May last, and the moonsiff directed to summon the defendants and report on their apparent age. He has accordingly done so, and states Zumeer to be from twenty to twenty-one years of age and Sumeer sixteen or seventeen, and this was the opinion of respectable persons who were present in the court when they were examined. Under these circumstances it is quite clear the respondent sued a minor, who could only be so through his guardian or next friend. The case must therefore be returned to the moonsiff to be again brought on his file, and to pass an order of nonsuit, saddling the plaintiff with all the costs in his own court besides those of the appellant in this. The value of the stamp on which the petition of appeal is written, to be returned to the appellant.

THE 27TH MARCH 1849.

No. 79 of 1847.

Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shahzadpore, dated the 20*th May* 1847.

Pallan Sheikh, (Defendant,) Appellant,

versus

Elias Marquis, (Plaintiff,) Respondent.

THE respondent instituted this suit to set aside a summary award of the deputy collector of Pubna, dated the 16th July 1845, releasing

from attachment, (under Regulation V. of 1812) property attached by the respondent belonging to the appellant, for an arrear of rent amounting to 8 rupees 3 annas, alleged to be due under a *kubooleeut* given by the appellant to the respondent for certain lands in mouzah Danaile. The deputy collector held that the appellant was a *jotedar* of mouzah Keale Salkea, that he had no lands in Danaile, and that the evidence adduced by the respondent did not go to establish that the *kubooleeut* had been given to him by the appellant. The moonsiff, however, after examining four witnesses, who attested the *kubooleeut*, and four others, who were present when it was given by the appellant to respondent, reversed the deputy collector's order, that is, upheld the *kubooleeut* and attachment made under it, and decreed the rent claimed, citing the decision of the Sudder Court in the case of Dwarkanath Tagore *versus* Dhannoo Kulloo, (page 65 of the S. D. A. Decisions for 1847,) as one in point.

Against this decree appellant has appealed, again pleading he was a *ryut* of the Sandyals and not of the respondent, and that the respondent had not proved that he had before paid any rent for the land to him. The appeal was admitted on the 21st July last, to read all the evidence taken by the deputy collector and also in the moonsiff's court. The *nuthee* in an Act IV. case was also called for relating to *mouzah* Danaile. The principal sudder ameen was also called upon to state if the Sandyals had instituted any suit before him to obtain possession of Danaile, and has replied in the affirmative. From the evidence taken before the deputy collector there can be no doubt he was right in his decision, inasmuch that the *kubooleeut*, or its execution in favor of the respondent, was not proved. From the additional evidence taken before the moonsiff, again, it is proved that the appellant did give Marquis the *kubooleeut*, and voluntarily, though the witnesses could not all speak to where the land was. From the evidence of the witnesses produced before the moonsiff by the appellant, it is proved that he held a *jote* in *mouzah* Keale Salkea, and in that alone, and had given a *kubooleeut* to the Sandyals through their *naib*, who had given him a *pottah*. However conflicting all this is, and unsatisfactory as to the appellant being seised of the lands for which rent is claimed, under the precedent of the case cited by the moonsiff, all the court has to decide is, "the genuineness of the *kubooleeut* before it and the existence of a balance thereon," and, concurring with the moonsiff, that it was given by the appellant to the respondent, voluntarily, and that there is no proof of the sum due on it being paid, the moonsiff's decision must be affirmed, and the appeal dismissed. This decision, however, not to be held as establishing the right of Marquis, or any one else, to the lands set forth in the *kubooleeut*, on which the moonsiff has decreed the rent claimed. All costs are made chargeable to the appellant.

THE 27TH MARCH 1849.

No. 161 of 1847.

Appeal from the decision of Moulvee Sadut Ullee, Moonsiff of Bauleah, dated the 27th September 1847.

Doorga Nund Roy, (Defendant,) Appellant,

versus

Ram Needhee Das, (Plaintiff,) Respondent.

THIS suit was instituted by Ram Needhee Das against the appellant (a mohurer of this court,) on the 28th August 1846, to recover 22 rupees, 13 gundahs, 1 cowree, alleged to be due on account of wages, and the moonsiff gave the plaintiff a decree for 16 rupees, 8 annas, 16 gundahs. Against this decision the appellant has appealed, and the respondent having died in the *interim*, the appellant was directed to serve an *ishtehar*, or proclamation on deceased's heirs, but this he has not been able to do, as he (appellant) cannot state where they reside. All therefore that remains is to dismiss the appeal.

THE 29TH MARCH 1849.

No. 10 of 1847.

Appeal from the decision of Moulvee Sadut Ullee, Sudder Ameen of Bauleah, dated the 9th July 1847.

Kalee Kant Sandyal, (Defendant,) Appellant,

versus

Kashee Chunder Moitree, (Plaintiff,) Respondent.

THE respondent instituted this suit to have cancelled and set aside a deed of sale, from Sheebnath Lowree to the appellant, of certain property. Sheebnath was the judgment debtor of the respondent, who sued out execution of his decree and attached the property, when the appellant objected, and put in his claim of prior purchase, and, on giving proof, the principal sudder ameen held the claim good, and directed that the property should be released from attachment on the 9th January 1845, and his order was confirmed by me in appeal on the 3rd of May following. The sudder ameen, as the deed of sale had not been registered, and with reference to the evidence that, at the time of attachment by the plaintiff (respondent,) Sheebnath was seised of the property, held that the sale was collusive and a *benamee* transaction, and therefore reversed the principal sudder ameen's summary order, declaring the property liable to sale on account of the decree passed in favor of the plaintiff or respondent.

Against this decision the appellant appeals, insisting that the sale was a *boná fide* transaction, and as the property had been sold to him long before the attachment was sued out, under a precedent of the

Sudder Court (which he cited) the sale was valid, and could not be disturbed.

It would appear that although the deed has not been registered by the register of deeds, it was so by the purgunnah cazee on the 22nd March 1843 A. D., corresponding with the 10th Chyte 1249 B. S. This is clearly proved by an examination of the original registry book, the pages of which are attested with the initals of the late judge of this zillah. The attachment was not sued out till the 7th September 1844, and appellant put in his objection or claim on the 12th of the same month. Both parties have given proof of seisin *subsequent* to the date of purchase, *i. e.* by appellant and respondent, of Sheebnath being in possession; but adverting to the fact of the deed being signed, sealed, and delivered, nearly a year and a half before the attachment, I consider the evidence and proof to the transaction being a *bonâ fide* one, greatly preponderate in favor of the appellant, and therefore reverse the sudder ameen's decision, and decree the appeal, making all costs in both courts chargeable to the respondent.

THE 29TH MARCH 1849.

No. 26 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 28th September 1847.

Kalee Soondree Chowdrain, widow of Gournath Chowdree, deceased, (Plaintiff,) Appellant,

versus

Bawool Chunder Paul, (Defendant,) Respondent.

THE appellant sued partly for the reversal of the magistrate's orders passed in an Act IV. of 1840 case, giving the respondent possession of lands in two *bheels* called by her Doblia and Gocoolbattee, and also for other lands as included in the same, the whole quantity of land claimed being 95 *beegahs*, and the suit laid at rupees 1,592, 13 annas, 8 pies. The original dispute was for 35 *beegahs*, which the appellant alleged had been cultivated by a person named Gocool, and who resided on the spot, and thus the name Gocoolbattee. She now changes the designation of the land, and it would appear claims it as forming part of her estate called Ramnuggur. The principal sudder ameen dismissed the suit on account of this shifting of names of the place, and because the plaintiff had not produced any proof whatever that the land claimed had ever belonged to Ramnuggur. An ameen had been deputed to make a local enquiry, but his report the principal sudder ameen rejected as collusive and also inconsistent with the evidence.

The appeal rests on this report of the ameen's, and it is alleged the mooktyar miscalled the place in the foujdarry petition. After reading all the evidence, I concur with the principal sudder ameen, that there is none, or no document, to shew that the land had ever belonged to Ramnuggur, or that the appellant had been seized of the same. I find that the whole of *bheel* Doblia (according to the magistrate's proceeding in the Act IV. case) was only assessed at a *jumma* of rupees 2, 8 annas. How could appellant on this *jumma* lay claim to 95 *beegahs* of land? The principal sudder ameen's decision is therefore affirmed, and the appeal dismissed with costs.

THE 29TH MARCH 1849.

No. 18 of 1847.

Appeal from the decision of Moulvee Sadut Ulee, Sudder Ameen of Bauleah, dated the 2nd of October 1847.

Kalee Soondree Chowdrain, (Defendant,) Appellant,

versus

Bawool Chunder Paul, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover as damages rupees 450, 11 annas, 3 pies, for the price of a paddy crop, taken from 31 beegahs and 6 cottahs of land.

The land formed part of that in dispute, referred to in the appeal case No. 26 of 1847, from the principal sudder ameen, decided this day. The appellant insisted the land belonged to *bheel* Doblia, appertaining to her estate of Ramnuggur, and denied cutting the crop. The sudder ameen, adverting to the principal sudder ameen's decision, dismissing the appellant's claim to the land, decreed the damages as laid by the respondent.

The grounds of appeal are that there was no specification in the plaint by *whom* and *how* the land had been cultivated; that the produce claimed was much more than the land would yield, and 2 maunds for the rupee a very low rate for paddy, and that 4 or 4½ maunds was the outside of the crop per *beegah*. I have gone through the whole of the evidence. The respondent's witnesses depose to the land yielding 20 *maunds* a *beegah*, and that the selling price at the time was 2 *maunds* of paddy for the rupee. Appellant's on the contrary depose that 4 or 5 *maunds* was the quantity obtained per *beegah*, and the selling price *then* 2½ to 3 *maunds* per rupee. I think it will be safest to take the average of these conflicting statements, and therefore, in amendment of the sudder ameen's decree, adjudge that appellant pay the respondent at the rate of 12½ *maunds* per *beegah*, calculating the price of the crop at 2½ *maunds* for the rupee; and, under all the circumstances of the case, the parties will pay their respective costs in this appeal.

THE 31ST MARCH 1849.

No. 14 of 1847.

Appeal from the decision of Moulvee Sadut Ullee, Sudder Ameen of Bauleah, dated the 28th September 1847.

Kalee Kaunt Lowree, (Plaintiff,) Appellant,

versus

Ramneedhee Dass, Ramdhun Dass, Ramjoy Dass, Hureenath Dass, and Muneeram Dass, (Defendants,) Respondents.

THE appellant instituted this suit to set aside an award of the collector of Rajshahye, who on a suit for replevin awarded to the respondents rupees 307-5-8, as damages for their cattle illegally distrained by the appellant's naib. The cattle were distrained on account of rent due for lands alleged to be in the possession of the respondents in Kanchee Badara. The appellant, however, denied that he had any thing to do with the *mouzah*, or place. The sudder ameen, however, holding that he was the *benamee* proprietor, and that the respondents had nothing to do with the lands, (but owing to some dispute between the appellant and Bishenath Sircar, the zemindar of the respondents, their cattle had been thus illegally distrained,) dismissed the suit, upholding the collector's order passed under Regulation V. of 1812.

The grounds of appeal are, that appellant had nothing to do with Kanchee Badara, or Chunderkant Chowdhree, who was the proprietor of the *mouzah*, that Beekakur Chakee was his naib at Pakorea, and that he was also in the service of Chunderkant Chowdhree. Both the collector and sudder ameen having ruled that the appellant was the *benamee* proprietor of Kanchee Badara, and that the cattle had been taken to appellant's cutcherry at Pakorea,—in order to refute this, the appellant's vakeels were told to produce their client in 14 days, to make a solemn declaration that he had nothing to do with the aforesaid *mouzah*, and that the cattle had never been taken to his cutcherry, but they have failed to do this; and as it is quite clear from the evidence that the cattle were taken to the Pakorea cutcherry, and that the respondent owed no rent on account of lands in *mouzah* Kanchee Badara, the appellant must be held *jointly* liable with the other defendants against whom a decree was given by the collector. The sudder ameen's decision is therefore affirmed, and the appeal dismissed with costs.

THE 31ST MARCH 1849.

No. 8 of 1848.

Appeal from the decision of Moulvee Sadut Ullee, Sudder Ameen of Bauleah, dated the 26th April 1848.

Chunderkant Chowdhree and Gourkishore Surkar, (Plaintiffs,) Appellants,

versus

Ramneedhee Dass, Munneeram Dass, Hurreenath Dass, Ramdhun Dass and Ramjoy Dass, (Defendants,) Respondents.

THIS was another suit to set aside the same award of the collector, brought by Chunderkant Chowdhree, the alleged zemindar, and Gourkishore, his *ijardar*, also mulct in damages *jointly* with Kalee Kant Lowree. They both deny that the latter had anything to do with Kanchee Badara, and insist that the rent was due by the respondents under their *kubooleeuts*, and that the sudder ameen should have taken proof from them that they had given the *kubooleeuts*, and cultivated the land for which the rent was demanded. In such a case I do not see that it was at all necessary. The question was whether the collector had properly or improperly exempted the *ryuts* from the demand of rent, and also if damages were called for. This was an issue to be tried on the record before the collector, and from it there can be no doubt of the illegality of the distraint, and the liability in consequence of the appellants. The sudder ameen's decision is therefore affirmed, and the appeal dismissed with costs.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 7TH MARCH 1849.

No. 2 of 1847.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, Principal Sudder Ameen of Sarun, dated 10*th December* 1846.

Achootaram, Madooram, Ramnarain, Gopal Pandey, Seetulpershad, and Toolseeram, (Plaintiffs,) Appellants,

versus

Musst. Kuddecroonnisa, (Defendant,) Respondent.

CLAIM, for possession and enrolment of name in the collector's registers as proprietor of 7 annas of the entire estate of Muthoorapore, pergunnah Arrah, district of Shahabad, (deducting Siriram's 1 anna share,) with mesne profits from 1247 to 1250 Fussily. Total valuation, Company's rupees 1,061, 6 annas, 10 pie.

This suit was instituted at Arrah on the 6th January 1844, but referred for trial to this district by the Court's resolution No. 803 of 1845, as stated in the judge's proceeding of the 21st May 1845, in consequence (it is presumed) of the defendant being the wife of Monowur Ali, the principal sudder ameen of Shahabad.

I find from the record that the permanent settlement of this estate, Muthoorapore, was *eventually* made with Musst. Kudderoonissa as the "maafeedar lakhirajdar," under the orders of Government conveyed by the Sudder Board of Revenue, dated 10th July 1840. The tenure had been previously described by the Board of Revenue (*vide* letter 5th April 1839) to be registered as a "hookamee grant (other than badshahee) as far back as 1137 Fussily," observing that "by law the settlement should be made with the lakhirajdar," and that it was not apparent who the sellers and pledgers were to plaintiffs (in this case.) It is in order to reverse this order that plaintiffs come into court claiming the right of possession or in other words the right of settlement.

They state that they held 2 annas of the estate as their proprietary right in lieu of malikana at the time when the property was in possession of Sheik Burkutoollah and Mahomed Jamal, and that 6 annas they hold at a "mokurruree" jumma; that corresponding shares are similarly held by the heirs of Hunman Singh, thus comprising the whole estate. Plaintiffs add that 1 anna of their 8 annas share belongs to Siriram Pandey, and they have transferred another

anna to the plaintiffs, Seetulpershad and Toolseeram, *to meet the expenses of this suit.* In support of their claim they produced before the lower court a bill of sale for half the estate executed by Miherban and Shuja Rai, in favor of Goodram Pandey, dated in 1156 Fussily, also a deed of relinquishment, dated 1171, to the same, also a deed of mortgage to the son of Goodram for 2 annas, dated 1195 Fussily, a bill of sale for 2 annas in favor of Achootaram, 10th Poos 1227 Fussily, and the first settlement proceeding, 16th February 1838, in their favor (which was reversed by the Board,) with acquittances from 1223 to 1243 Fussily.

The defendant claimed the entire estate by a deed of sale, dated 27th Chyte 1224 Fussily, (1817 A. D.) and referred to the orders of Government and the Board of Revenue, which had confirmed in perpetuity the settlement of the estate with her as the lakhirajdar, and rejected the claim of the mokurrureedars as being "very doubtful, and that recent enquiries had shewed that they were ticcadars paying rent to mokurrureedars." Defendant further observed that Mahomed Jamal was not connected in any way with the estate.

The principal sudder ameen observed that plaintiffs appeared to ground their title on deeds executed by Mahomed Jamal in their favor, but that in the decree of Musst. Bukshun *versus* Surdown Rai and others, (for rent,) dated 30th May 1829, it was recorded that the said Mahomed Jamal had apparently no proprietary right; that the first settlement (since cancelled) was concluded with them as mokurrureedars, and not as maliks; that plaintiffs' claim had been rejected for not filing their sunnud (mokurruree pottah,) *which was not yet forthcoming;* that defendant's bill of sale clearly proved that she was the proprietor of the estate, and therefore plaintiffs' claim must be dismissed with costs.

JUDGMENT.

On the 12th February 1847, one of the appellants, Achootaram, withdrew his appeal. The remaining appellants (plaintiffs in the case) recapitulate the several arguments used in their plaint and replication in favor of their claim, and state that the mokurruree lease which the principal sudder ameen says was not forthcoming was filed in the principal sudder ameen's court; and on referring to the record I find that it was presented with a petition on the date of the lower court's final decision; the document, however, does not bear the principal sudder ameen's initials, and therefore may have been surreptitiously filed subsequently. But whensoever filed, it is of itself insufficient, in my opinion, to support plaintiffs' claim to the right of settlement. The rules approved of by Government and issued on the 14th June 1837, for the settlement of hookamee tenures, fully justify the settlement of this estate with the defendant as lakhirajdar. Plaintiffs have failed to prove that they have derived their

title directly or indirectly from the grantees of this hookamee tenure, or their successors, or that as maliks they have held long possession paying a portion of the proceeds to the maafedars as the Government share. Therefore the settlement appears to have been rightly made with the lakhirajdar. I observe that plaintiffs acknowledge having transferred a portion of the property claimed to a third party on condition of assisting in paying the expenses of this suit. Such a proceeding styled champerty is not recognized as a legal act. For the above reasons, it is ordered, that this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 26TH MARCH 1849.

No. 80 of 1848.

A Regular Appeal from a decision passed by Moulvee Mahomed Waheedooddeen, Moonsiff of Sewan, dated 7th April 1847.

Sheik Mahomed Saeed and Sheik Mahomed Yacoob, (Plaintiffs,) Appellants,

versus

Meer Madar Buksh and Sidakut Hossein, (Defendants,) Respondents.

CLAIM, Company's rupees. 82, 10 annas, 3 pie, on account of balance of arrears of rent for 1252, 53 and 54 Fussily, including interest and exchange as per wasil-bakee account.

Plaintiffs, the proprietors of a 2-3rd share of the village of Kalan, pergunnah Baal, instituted this suit against defendants, alleging that they had cultivated beegahs 6, cottahs 17, at 27 rupees, 6 annas, 3 pie, *per annum*, and had only paid 13 rupees, leaving an arrear on account of three years, amounting to Company's rupees 69, 2 annas, 9 pie, which, with interest and exchange, made up the amount claimed.

Defendants answered that their specific shares in cultivation were 8 beegahs, 17 cottahs, and that the rent was 13 rupees, 11 annas, and after deducting 4 rupees, 8 annas, for the *musjid* light provided by them, rupees 9, 3 annas only were due to these maliks yearly, or rupees 27, 9 annas, for three years, of which they had paid 13 rupees (admitted by plaintiffs,) and that the balance due for 1254 Fussily, had been refused at that rate upon a general demand for increase.

It should be here stated that plaintiffs had first attached for arrears of rent on account of 1254 Fussily only, and replevin granted by the deputy collector on a summary suit in the absence of any written engagements, and because the arrears for 1252-53 Fussily were also due, and thus the summary claim for 1254 Fussily was not susceptible of adjustment, either on the written engagements of the parties, or on rents paid in past years.

Plaintiffs accordingly instituted this regular suit for the full arrears due to them on account of 1252, 1253, and 1254 Fussily; and the moonsiff of Sewan has nonsuited the claim, on the ground that plaintiff should have sued separately, one suit for the reversal of the summary award, and another suit for the arrears of rent.

JUDGMENT.

The moonsiff's decision is clearly wrong. Summary suits for rent are no bar to the institution of regular suits for the more formal investigation of the claims of parties, and as the replevin from distress had been granted for not including the arrears of 1252 and 1253 Fussily, plaintiffs were fully justified in instituting this regular suit for the recovery of the full amount of arrears due by defendants on account of 1252, 1253, and 1254 Fussily.

ORDERED,

That this decision be reversed, with refund of stamp duty, and the suit be sent back for re-trial. The costs to be adjusted hereafter.

THE 26TH MARCH 1849.

No. 81 of 1848.

A Regular Appeal from a decision passed by Moulvee Mahomed Waheedooddeen, Moonsiff of Sewan, dated 7th April 1848.

Gungadeen Rai, (Plaintiff,) Appellant,

versus

Anoopa, for self and guardian of Tejpertab Rai, a minor, Eibaron, Poorun, and Ramnath, (Defendants,) and Soonsar Singh, (third party,) Respondents.

CLAIM, for possession of 2 beegahs, 5 cottahs of land in the village Indee, pergunnah Mangee, with mesne profits from 1251 to 1254 Fussily inclusive, total estimated value, Company's rupees 142, 5 annas.

This suit was instituted by plaintiff on the 11th September 1847, setting forth that his grandfather Bhowanee Singh, had assigned 2 beegahs, 5 cottahs of land to Pirtee Singh, grandfather of Tejpertab Raee, for life on account of maintenance, taking an agreement, dated 30th Poos 1217 Fussily, from the grantee, relinquishing all claims after his death and binding himself not to sell or farm the land intermediately; that Pirtee Singh died in Asar 1250 Fussily, when Eibaron and others (sons of Nurkoo Rai) disputed the plaintiff's right to resume, on the plea of absolute purchase from the said Pirtee Singh, under date 16th August 1823, for 232 rupees, denying Pirtee Singh's agreement to plaintiff, which was a fabrication, and declaring that Pirtee Singh had died 19 years ago, which barred plaintiff's claim, even if the deed had been in itself authentic, which it was not,—adding that plaintiff was a witness to their bill of purchase,

which, however, in replication, plaintiff denied. In the rejoinder defendants explain that Pirtee Singh and Bhowanee Singh were brothers.

The moonsiff of Sewan (to whom this suit was specially transferred for trial to equalize the files) dismissed plaintiff's claim with costs, observing that Bhowanee Singh, as joint proprietor in an estate paying revenue to Government, had no power to alienate specific lands for any purpose, that the undisturbed possession of Pirtee Singh for 39 years had been admitted by plaintiff, and the ikrarnamah, upon which plaintiff founded his claim, was incapable of attestation, as all the subscribing witnesses were dead, and it was neither sealed nor registered, and it was not alluded to by plaintiff when he claimed to have his name registered in the mutation register, although his claim had been disputed by defendants, and moreover the deed appeared to be fabricated.

JUDGMENT.

It was held in appeal that the ikrarnamah produced by plaintiff, being neither sealed nor registered, nor authenticated by subscribing witnesses, cannot be recognized by the court as a valid document. Moreover, neither, the deed itself nor the plaint, make any allusion to *boundaries*, which is necessary in suits for possession of so many beegahs of land. The rejection of plaintiff's suit, however, for possession of 2 beegahs 5 cottahs of undefined land in the village, will not interfere with any rights which he (plaintiff) may possess as a proprietor in the joint undivided estate. Nevertheless this claim for specific lands not having been in any way substantiated must be dismissed.

ORDERED,

That the decision of the moonsiff of Sewan be affirmed, and this appeal be dismissed with costs.

THE 26TH MARCH 1849.

No. 83 of 1848.

A Regular Appeal from a decision passed by Mr. Colin McDonald, Moonsiff of Pursa, dated 17th April 1847.

Achumbit Raee and Hunsraj Raee, (Defendants,) Appellants,

versus

Musst. Ugar Koer and Musst. Phoolbas Koer, widows of Sheopurshad Raee, (Plaintiffs,) Respondents.

CLAIM, for Company's rupees 298, 10 annas, 4 pie, on account of principal, interest, and exchange of a bond, dated 25th Jeit 1243 Fussily.

Plaintiffs, the widows of Sheopurshad Raee, instituted this suit in 11th August 1847, setting forth that Musst. Chunee Koer, wife of Bhojraj Rae, borrowed 25 rupees from their late husband, and executed a bond, dated 3rd Bhadoon 1234 Fussily; that the said Chunee Koer died in Jeit 1243 Fussily, and defendants, who had inherited her property, had borrowed other 90 rupees for her funeral expences, and 11 years after these transactions, defendants had consolidated these sums, adding an equivalent sum (viz. 25 rupees more) for the interest of the debt, (which had exceeded the principal,) and executed a new bond for the aggregate amount, or Company's rupees 140. This latter deed was executed on the 25th Jeit 1243 Fussily. Another 11 years elapse, and plaintiffs, on the death of their husband, (which took place in 1252 Fussily,) came into court to realize the amount of the bond with an equivalent amount of interest and exchange in Company's rupees, viz.:

Principal, ...	140		
Interest,................................	140		
Exchange, ...	18	10	4
Company's Rupees,......	298	10	4

Defendants deny the bond, urging, that the said Chunee was in circumstances which did not require her to borrow money, and that they had paid her funeral expences from their own means; and that they were at Bukhoorapoor, in the district of Shahabad, from Bysack to Sawun 1243 Fussily (including the time mentioned in the bond,) and that the claim arose from enmity.

The moonsiff of Pursa decreed in favor of the plaintiffs, deeming the bond sufficiently authenticated by the subscribing witnesses, discrediting the *alibi* set up, as plaintiffs in refutation had filed a petition and proceeding of this court, dated 20th May and 11th June 1836 respectively, showing that Achumbit, one of the appellants, was at Chupra at the time.

JUDGMENT.

Defendants appeal in dissatisfaction, recapitulating their former objections urged against the authenticity of the bond, but I find no reason to doubt the genuineness of the bond. It is within the law of limitations, and is well attested by the subscribing witnesses, although a considerable time has elapsed since the transaction occurred; the law moreover (Section 7, Regulation XV. of 1793,) recognizes the renewal of the bond for aggregate of principal and legal interest remaining due upon adjustment, and consolidating the whole into principal, although it prohibits a decree for compound interest arising from intermediate adjustment of accounts. For the above reasons, it is ordered, that this appeal be dismissed with costs, and the decision of the moonsiff of Pursa be affirmed.

ZILLAH SYLHET.

PRESENT : H. STAINFORTH, ESQ., JUDGE.

THE 7TH MARCH 1849.

No. 16 of 1849.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated the 29th December 1848.

Ramshurrun Deb, Appellant,

versus

Mahomed Asin and Mahomed Kaleem, Respondents.

APPELLANT sues to recover, with interest, the price paid by him for land, for *possession* of which his suit had been dismissed under an opinion of the Mahomedan law officer, who declared the sale void, because respondents' mother was not a party to the sale.

Respondents resisted the claim, denying the alleged sale, and pleading that appellant had, in order to obtain possession of the land, fabricated a deed of sale and an agreement for the rent of it, and had first sued for rent, and afterwards for possession of the land, in both of which attempts he was foiled, his suits having been dismissed, and that the present suit founded on the same deed is inadmissible.

The moonsiff (Baboo Hergouree Bose) dismissed the suit, principally on account of discrepancies in the evidence of the witnesses.

Appellant now urges that his suit for the land failed on account of legal imperfection in the deed of sale; that the discrepancies in the evidence of his witnesses are unimportant; and that payment of the consideration which he seeks to recover is proved.

JUDGMENT.

I find that appellant first sued for the *rent* of the land, and that his suit was dismissed, on the score of respondents' possession; and that he then sued for *possession;* and that his second suit was dismissed, *in appeal,* solely because respondents' mother was a sharer in the land, and was not a party to the sale. The present suit is for the money alleged to have been paid for the land, and the sole issue I have to determine relates to the reality of the payment. This the moonsiff discredited on account of discrepancies in the evidence, but careful consideration of those discrepancies, in connection with the probabilities of the case, has not led me to attach the same importance to them, that the moonsiff has held

them to involve. The price said to have been paid for the land is the paltry sum of Sicca rupees 15-12, to all appearance hardly a sufficient sum to induce this third suit falsely, in the face of an opinion, expressed by the moonsiff in the second suit, unfavorable to the supposition of the reality of the sale. Moreover, no sufficient ground of false suit is assigned. And, under these considerations, I am led to the conclusion that the evidence of appellant's witnesses, and of several witnesses examined by the ameen deputed in the second suit to investigate the matter of the sale locally, shewing that the sale actually took place, is true, and consequently that appellant's claim is just.

It is therefore ordered,

That the decree of the moonsiff be reversed, and the claim decreed in appellant's favor, with costs and interest to the date of realization.

The 7th March 1849.

No. 221 of 1848.

Appeal from the decision of Mahomed Moazum, Moonsiff of Nubbeegunge, dated the 9th November 1848.

Birjoo Ram, Appellant,

versus

Asa Ram and Chinta Ram, Respondents.

Appellant sued for rupees 30, damages, in consequence of having been threatened, before an assembly, with being beaten with a shoe, because he had been accused of saying that his uncle fixed the order of precedence taken at assemblies of the parties and their associates.

Respondents filed answers, mentioning the speech imputed to appellant, but denying having said any thing derogatory to him.

The moonsiff (Moonshee Mahomed Moazum) observed that appellant was not present when the obnoxious speech was made by Asa Ram; that Asa Ram had not mentioned his name; and that appellant did not appear to have sustained any injury; and, on these grounds he dismissed the suit.

Appellant now urges that he is on bad terms with respondents, who had conspired to injure him; and that he is deeply injured by them.

Judgment.

The following seems from the evidence to have been the substance of the conversation, which has led to the institution of this suit.

Chintaram. There is a man in Atgaon, who says his uncle gives *lotas* to the inhabitants of Satgaon, &c., just as he pleases, and that they sit where he directs.

Asa Ram, (Respondent).—I will give the man a shoeing who made such a speech and his father also.

Jeet Ram. Why do you talk of shoeing a man without knowing who he is?

Chinta Ram, (Respondent).—Birjoo Ram made the speech.

Asa Ram, (Respondent).—If Birjoo Ram made the speech, it must be enquired into by a punchayut when he is present.

This is the substance of what appears to have passed; and as no collusion is shewn to have existed between Chinta Ram and Asa Ram, I have only to decide whether the speeches of the latter form a good ground of suit. He first said that he would beat the man who had made the speech mentioned by Chinta Ram. He said it in general terms, naming no one, while it is not denied that the saying imputed by Chinta Ram, was both arrogant and offensive to respondents. Clearly, then, this first speech by Asa Ram forms no ground of suit; and as clearly ineffectual for such purpose is his second speech that, if Birjoo Ram had said what was imputed to him, it must be the subject of enquiry. Moreover, no damage is shewn to have been sustained, that damages should be awarded. Under these circumstances, I see no reason to interfere with the decision of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 12TH MARCH 1849.

No. 35 of 1848.

Appeal from the decision of Baboo Ramtaruk Rae, Moonsiff of Hingajeeah, dated the 31st December 1847.

Zynub Beebee, Appellant,

versus

Udeena Beebee and Mahomed Sirdar, Respondents.

RESPONDENTS sued under a bond, alleged to have been executed by appellant in favor of Udeena Beebee, respondent, in order to exempt from sale the property belonging to appellant and her people, which had been distrained for rent.

Appellant denied execution of the bond, and urged that it was fabricated to counteract the suits instituted for redress for illegal distraint and sale, which would not have been preferred unless true; that the nephew of Udeena Beebee (respondent) had, in contradiction of the bond, caused an entry to be made in the thanah diary, setting forth that his aunt had received *nothing* through the proceedings under Regulation V. of 1812; that, though the said proceedings were directed against appellant's son and others, they were not against herself, that she should undertake payment of the balance of the sum claimed; and that the receipt filed in them not only

makes no mention of appellant, but specifies the sums realized in *cash from the defaulters*, (*i. e.*, in a manner incompatible with execution of the bond at the time.)

Respondents filed a reply, controverting appellant's objections.

The moonsiff (Baboo Ramtaruk Rae) held execution of the bond in suit, by appellant, proved; but, as the bond was for a balance of rent, he decreed that the interest should run from the date of his decree only.

Appellant now further urges that the discrepancies in the evidence of the witnesses, in the suits to set aside the proceedings under Regulation V. of 1812, on which the moonsiff has commented, are immaterial; that the bond was fabricated to neutralize those suits; that the moonsiff had, in two of these suits, adjudged the rent, part of which is included in the bond in suit, to have been an illegal demand; that the witnesses adduced by respondent reside at a great distance, and are appellant's enemies; and that appellant's own witnesses have not been sent for.

JUDGMENT.

I find that Udeena Beebee, under a claim for 62 rupees, 11 annas, distrained the property of seventeen persons, as defaulting tenants, among whom one is Bundee Alee, appellant's son, and caused the sale of two bullocks for 5 rupees, 9 annas, and finally filed a receipt for the balance with the commissioner; that subsequently three suits were instituted, viz., No. 379, by Nitaye Malee and others, No. 381, by Durvesh Mahomed and another, and No. 329, by appellant and others, to prove the proceedings under Regulation V. of 1812 illegal, and recover rent paid by the proceeds of the sale of the cattle and in *cash* against Udeena Beebee, respondent, &c.; that Udeena Beebee, on the other hand, has preferred the suit under decision to realize the amount of the bond in suit as executed by appellant, in liquidation of the balance due after crediting the proceeds of the sale of the cattle, and (*vide* the receipt) 3 rupees, 12 annas, realized in cash from Seeraye Nao, &c., and deducting the sum of 7 rupees, 7 annas, remitted.

I find further that suit No. 329 was dismissed in default of the plaintiffs in it, on the 28th May 1847; that in suit No. 379, the moonsiff decreed that plaintiffs should recover 4 rupees, 8 annas, the price for which the bullock of Nitaye Malee was sold, with an equal sum as penalty, and that plaintiffs should further receive the sum of 16 rupees, 8 annas, which, however, they had not, in the moonsiff's opinion, paid, as they averred, *in cash*, but which was held to be included *in the bond* in the suit now under decision; that similarly in suit No. 381, he decreed that Durvesh Mahomed and his co-plaintiff should receive 6 rupees, which was held not to be paid *in cash*, as they asserted, but to be also included in the bond; and that, on the other hand, he has given respondents a decree for the full amount of the principal of the bond in suit, disallowing in-

terest antecedently to the date of his decree, because the bond was on account of rent.

The decrees of the moonsiff in suits Nos. 379 and 381 are conflicting with his decree in the suit now under decision. In the two first he has strangely decreed that the plaintiffs in those cases shall receive part of the sum comprehended in the bond now in suit, by the execution of which they did not profess themselves endamaged, and were in nowise liable, the bond in this suit having been executed by appellant alone, and with equal strangeness in the present suit, concluded contemporaneously with the other two, he has decreed the full amount claimed, though part of it is *de facto* decided, in those other cases, to be illegally claimed; and further his decision in this suit is faulty, in that it rests partly on the evidence of Moonshee Ubdoosumud, vakeel of the plaintiffs in suits Nos. 379 and 381, who has been most improperly examined on matters communicated to him in his capacity of vakeel, and in that he has disallowed the interest which had accrued previously to the date of his decree.

As the sums 16 rupees, 8 annas and 6 rupees, claimed in suits Nos. 379 and 381 respectively, have been adjudged to be part of the bond in the present suit, and to have been an unjust and illegal demand, and no appeal has been preferred from the decrees passed so adjudging them, their amount must at all events be deducted from the present claim, and be disallowed; and as the claim of Zynub Beebee and others in suit No. 329 was dismissed on default on the 28th of May 1847, and appellant's vakeel, in answer to my question, has this day informed me that it was not revived, and that no other suit, besides those mentioned, has been instituted to set aside the proceedings under Regulation V. of 1812, and the defence does not moot the question whether the rent was fairly demanded, but simply disputes execution of the bond, I have now only, in order to decide on the remainder of the claim, to ascertain whether the bond in suit was executed or not.

It is urged in the petition of appeal that appellant has not had an opportunity of adducing the evidence of her witnesses, but this plea is abandoned by appellant's vakeel, who has expressed his willingness to abide judgment on the papers now before me, and I proceed to dispose of the only question which I have to decide, viz., whether the bond in suit was executed as respondents aver, or not.

Appellant's chief objections to the bond are: that it conflicts in tenor with the receipt filed before the commissioner; that it conflicts with an entry recorded as having been caused to be made by the nephew of Udeena Beebee, respondent, in the diary of the Hingajeeah thanah; and that it conflicts with probability, it being asserted to be improbable that appellant would have taken upon herself the debts of others, without some cogent reason for doing so:—and these objections must be separately considered.

First, there is the conflict with the receipt: the bond dated three days before the receipt purports to have been given in liquidation of rent, while the receipt exhibits the liquidation as having been made *in cash*. It is urged by respondents, that both receipt and bond were drafted by Mahomed Kulleem, appellant's nephew, who may have made the discrepancy to injure Udeena Beebee, respondent; and this statement appears to me extremely probable, because Mahomed Kulleem has denied all concern with the bond, though his name on it and his signature on the moonsiff's proceedings are unquestionably in the handwriting of the same person, and because his denial is absolutely contradicted by the evidence of respondent's witnesses, shewing that he, who admits himself to have drafted the vaqualutnamah executed by appellant, likewise drafted both the bond in suit and the receipt, as the appearance of the writing indicates him to have done. But, however, this may be, whether the discrepancy under notice be owing to the hostility of Mahomed Kulleem or not, I attach little importance to it, because I know from experience that great inexactness prevails in expressing the consideration given for such deeds, and viewing it in connection with the whole circumstances of the case, I attach no importance to it whatever, especially as I observe that the receipt, after declaring realization of the net sum of rupees 4-15-2 by sale of cattle, and 3 rupees 12 annas from Seeraye Nao and Heera Nao, acknowledges payment of the rest without any specification of the amount, and thus indicates a settlement of the balance by some single act, and not by separate payments.

Secondly, there is the conflict with the entry in the thanah diary, which is of a subsequent date both to the bond and the receipt, and sets forth that Mahomed Nuseem, Udeena's nephew, has appeared at the thanah and stated that Mahomed Uzhur and Mahomed Eunas had, on the part of his aunt, realized the rent of her talookas, but had not paid it to her, and were going to fabricate a receipt, purporting to bear her signature. There is no evidence whatever to shew that this entry was really caused by Mahomed Nuseem: however, taking for granted that it was caused by him, though it purports to have been caused under apprehension of misfeasance on the part of Mahomed Uzhur and Mahomed Eunas, I have no doubt, with reference to its being dated after both receipt and bond, to the utter absence of all complaint by respondent against Mahomed Uzhur and Mahomed Eunas, and to the tenor of the entry, evidently calculated to inspire belief that the rent realized was realized in *cash*, by omission of all mention of the *bond*, that it is a fraudulent transaction, contrived for the benefit of appellant, and the injury of Udeena Beebee, respondent.

Thirdly, there is the asserted improbability that appellant would take upon herself the debts of others. But I find that, out of the seventeen persons whose property was distrained, three persons who instituted suit No. 379 admitted themselves to be appellant's servants, as

did the five persons who were associated with her in suit No. 329, Durvesh Mahomed and Nazir Mahomed, plaintiffs, in suit No. 381, alone repudiating such connection; and, under these circumstances, I see nothing improbable in the assertion that appellant, in order to save the property of her son and her tenants from the ruinous operation of sale, executed the bond in suit.

I have now recorded my opinion on the three objections proposed for consideration, and have only to add that, had the demand under Regulation V. of 1812 been satisfied in *cash*, the payers, who, from the suits of many of them, appear to be most of them tenants of separate parcels of land, would surely have taken separate receipts for the sums paid by them respectively, and the absence of such receipts and the existence of a single acquittance, comprising the whole of the balance of rent after specifying two small sums as already mentioned, form to my mind strong ground for deeming the balance to have been satisfied by a single act of settlement, and, as no such act is asserted, other than that declared by respondents and represented in the bond, I am led to believe the testimony of respondents' witnesses, and hold the bond proved to have been executed by appellant, who, on this account, is, as I have shewn, liable to pay its amount, *minus* the sum of 22 rupees 8 annas, and with interest.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be amended; that the sum of 27 rupees 8 annas be decreed, with interest from the date of the execution of the bond, and costs in proportion against appellant, and in favor of Mahomed Sirdar, as prayed by Udeena Beebee; and that a copy of a separate proceeding be sent to the moonsiff, pointing out the errors which he has committed.

THE 16TH MARCH 1849.

No. 197 of 1848.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated the 30*th August* 1848.

Kishenram Pal and Kasheeram Pal, (Appellants,)

versus

Manikram Pal, (Respondent.)

RESPONDENT sued for rupees 64, damages, in consequence of having been abused by appellants, on remonstrating against their carrying off the fruit of a plantain tree growing on his land.

Appellants denied the abuse; pleaded that the plantain tree is on their land; and countercharged respondent with abusing them, &c.

The moonsiff (Baboo Hergouree Bose) held the defence to have failed, and respondent's statement proved: and he decreed rupees 10 damages, with costs in proportion, and interest to the date of realization, against appellants.

Appellants now urge that the main question for consideration is to whom the land, on which the plantain tree is growing, belongs; and that it is proved to be theirs, &c.

JUDGMENT.

The evidence of the witnesses of the parties clearly shews the plantain stock to belong to appellants. It appears to have encroached on a path, which is disputed by the parties, and, as Groopershad, who sold respondent the homestead under which he claims the plantain tree, denies that the path is included in the land sold to respondent, and declares it to be appellants' property, and there is no sufficient evidence on record, disproving the seller's testimony, which is supported by the evidence of several witnesses, and which appears to me worthy of reliance, I am led to the conclusion that respondent has unjustly interfered with appellants' rights, and thus brought down upon himself the abuse which he appears to have received, and that therefore there is no good ground for awarding damages.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the suit dismissed with costs.

THE 16TH MARCH 1849.

No. 199.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated the 28th August 1848.

Nittanund Shah, Appellant,

versus

Sheik Sirdar, Respondent.

RESPONDENT sued for 32 rupees, damages, on account of appellant having abused him, in consequence of his having previously taken cattle on a path along the aylc, or ridge, of appellant's land.

Appellant resisted the claim, alleged that respondent, servant of Sham Mistree, wanted to take his master's cattle through his (appellant's) field, which measure he (appellant) opposed, with the result of a quarrel with Omede Ram Mistree, uncle of Sham Mistree, who had probably made up this suit.

The moonsiff (Baboo Hergouree Bose) observed that appellant had not taken the measures necessary for the adduction of his witnesses, and holding respondent's statement proved, decreed 7 rupees damages with costs in proportion.

Appellant now controverts the propriety of the moonsiff's decision on a variety of grounds, which under the circumstances do not require detail.

JUDGMENT.

The cause of the quarrel, which is the subject of this suit, is admitted to be respondent's taking cattle along the "ayle" of appellant's ground; and I find that, before appellant abused respondent, the latter, according to the evidence of his own witnesses, insulted him, and, under these circumstances, I am of opinion that respondent is not entitled to damages.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the suit dismissed with costs.

THE 20TH MARCH 1849.

No. 193 of 1848.

Appeal from the decision of Moonshee Nazeerooddeen Mahomed, Moonsiff of Parkool, dated the 16*th August* 1848.

Lal Sikdar, Appellant,

versus

Annunt Ram Shah and others, Respondents.

RESPONDENTS sued for the reversal of a summary decree, passed against them at the suit of appellant, notwithstanding that they had tenanted no land belonging to him; and to recover their costs in the said suit: and they alleged that the land appertaining to appellant's pottah (from the collector) is near their land, and that appellant wanted them to bring it into cultivation, but that they did not do so, whence the summary suit.

Appellant answered, alleging his land to have been under cultivation by respondents, without a kuboolecut, ever since it was settled with him; that he had previously realized the rent under Regulation VII. of 1799, and had obtained a summary decree for the rent in dispute, *i. e.*, for 1252 B. S.

The moonsiff (Moonshee Nazeerooddeen Mahomed) observed that it did not appear, from the evidence of respondents' witnesses, or the local enquiry, that respondents had cultivated any land included in appellant's pottah, indeed that it would seem that the summary suit had been generated by the circumstance of the land in respondents' pottah being contiguous to that of appellant's: and, after noticing that appellant had been required to produce such oral and documentary evidence as he might wish to offer, on the 8th of October 1847, and had again been desired to furnish the latter on the 27th of January 1848, but had allowed more than nine months to elapse without doing so, he passed a decree in respondents' favor.

Appellant now urges that the evidence taken by the ameen shows that respondents cultivate the land of his pottah, and that appellant had taken the rent of it; that the ameen had filed a report and map at variance with the evidence and the local circumstances; that the

suit under Regulation VII. of 1799, for the rent of the preceding year, was forthcoming in the collector's office, but that it had not been sent for, or a second local enquiry made, by the moonsiff, who had reversed the summary decree, notwithstanding that respondents are proved to have cultivated the land in his pettah.

JUDGMENT.

Two witnesses adduced by appellant in the summary suit, swore that respondents cultivated ten kears of appellant's land in 1252, the year for which the rent in suit was taken, on a rent of 1 rupee per kear; but the evidence of other witnesses on the part of appellant, before the ameen deputed by the moonsiff, shews that the rent declared by these two witnesses is much greater than the proper rent of the land, and throws discredit on the whole of their testimony; and, on the whole, though not altogether satisfied that respondents have had no connection with appellant's land, I am satisfied that it was not in their tenancy in 1252: and, on this ground, the decree of the moonsiff appears to me just and proper.

IT IS THEREFORE ORDERED:

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 21ST MARCH 1849.

No. 39 of 1848.

Appeal from the decision of Mahomed Moazum, Moonsiff of Nubbeegunge, dated the 14th January 1848.

Guneshram Das *alias* Gunaye, Appellant,

versus

Oochubram Chung, Respondent.

RESPONDENT claimed, with mesne profits, 3 kear, 3 pao, 1 jet, part of 1 koolba, 4 kear, 2 jet, 3 reg of land, situated in mouzah Aneekeylee, burgram of talooka Sheopershad, No. 6 of pergunnah Chowalis, and sold to him by Rambullubh Gopt and Radakishun Gopt, on the 12th of Maugh 1250, but which appellant, now resident tenant, acting in collusion with the sellers, will not give up.

Appellant filed an answer, setting forth that the land in suit, situated in mouzah Aneekeylee, was jungle at the time of the decennial settlement, and therefore not included in any talooka; that it was brought under cultivation by him, and has been held by him for the last thirty or thirty-two years; and that it is in fact "eulam" land, the property of the state, open to assessment, to which he (appellant) is willing to agree.

Rambullubh and Radakishen filed an answer, supporting the plaint.

Respondent filed a reply, in which he states that all the "eulam" land in Aneekeylee has been brought under settlement.

The moonsiff (Moonshee Mahomed Moazum) held it proved by the evidence of two witnesses, that the land in suit belonged to talooka Sheopershad; that appellant was a mere tenant, paying rent to the sellers: and, after remarking that appellant, though repeatedly called on, had failed to produce evidence to substantiate his defence, and that the collector's report shewed that the "eulam" land in Aneekeylee had been measured, and a part assessed, and that consequently this could not be "eulam" land, he decreed the claim, making appellant, only, liable for the mesne profits, at the rate of 8 annas per kear *per annum*, with interest from the date of suit, and for respondent's costs, charging all the persons sued with their own costs.

Appellant now urges that the decree rests on the evidence of witnesses who are under respondent's influence; that he expected a local enquiry; and that he has now discovered that the land in suit is mentioned as "eulam" land, in the pottahs obtained from the collector by Danis Mahomed and others.

JUDGMENT.

Though appellant has neglected to adduce evidence in support of his defence, I am not satisfied with that brought forward by respondent, which is merely the testimony of two persons, who have sworn that the land is in talookà Sheopershad, and that appellant tenanted it from the proprietors of that talooka and paid them rent. No kubooleeut, or rental paper, of the talooka has been produced; and I hold a local investigation to be an indispensable preliminary to a satisfactory decision, whether the land is of the talooka No. 6, or is "*eulam*" land, *i. e.*, unassessed, and included in no talooka whatever.

IT IS THEREFORE ORDERED:

That the decree of the moonsiff be reversed, and the suit remanded for the enquiry above indicated. The price of the stamp on which the appeal is written, will be returned, and the moonsiff will pass proper orders in regard to the remaining costs of this appeal.

THE 26TH MARCH 1849.

No. 3 of 1848.

Appeal from the decision of Mahomed Salim, late Officiating Principal Sudder Ameen, dated the 25th January 1848.

Rutteeram Das and others, Appellants,

versus

Mahomed Ilim and others, Respondents.

RESPONDENT sued for 10 koolbas, 10 kear, 2 pao, 5 jet of land, in mouzah Teeleegaon of talooka Koorban Reza, in kitta Ramdeeka, of Jowar Buneachung, their purchase, with mesne profits from the 1st Asin 1244 B. S.,

The late officiating principal sudder ameen (Moulvee Mahomed Salim,) decreed the claim *exparte*, on the evidence adduced by respondents.

Appellants now urge that they had no information of the institution of the suit; that, had they been informed, they would have defended it; and that the boundaries of the land decreed are not laid down.

JUDGMENT.

The boundaries of the land decreed are not defined, and I think, under all circumstances, it will be better to remand the suit to the court of the principal sudder ameen, in order to give respondents an opportunity of amending their plaint, in which case the principal sudder ameen will decide, whether appellants are entitled to file an answer or not.

IT IS THEREFORE ORDERED:

That the decree of the late officiating principal sudder ameen be reversed, and the suit remanded for the purpose specified above. The price of the stamp of the petition of appeal will be returned, and the remaining costs provided for in the future decree of the principal sudder ameen.

THE 26TH MARCH 1848.

No. 179 of 1849.

Appeal from the decision of Baboo Sharodapershad, Moonsiff of Ajmereegunge, dated the 7th August 1848.

Muddun Mohun Deb, Appellant,

versus

Brijkishwur Rae, Respondent.

RESPONDENT sued under a bond, dated 29th Asin 1250 B. S.

Appellant admitted the bond, and pleaded that respondent had caused him to execute a ladavee, or deed renouncing his title to some land, in settlement of it; that the bond was deposited with one Kirteenarain Shah, who, according to the compact between the parties, was to have returned it to appellant, on his obtaining the signature of Ramkishen Biswas to the other deed, but that, instead of conforming to this agreement, respondent had taken possession of the land, and instituted this suit with collusion of the trustee: and he added that a large sum was due to him from respondent as wages, for which he was about to sue, but was forestalled by the present suit.

The moonsiff (Baboo Sharodapershad Ghose) has recorded in his decree that, though appellant's witnesses had spoken to appellant having served respondent for some months, their evidence in this point was immaterial, as it did not appear that appellant had applied

to have his wages credited in liquidation of his debt, and had been refused by respondent; that though Kirteenarain had stated that respondent had deposited the bond and 5 rupees with him, in order that the said bond should be returned to appellant, on the latter obtaining the signature of his brothers, as witnesses, to the deed of renunciation, but that it was given back to respondent, because they would not sign, and other witnesses had corroborated his testimony, still it did not appear how much money was given for the deed of renunciation, and instead of its being proved that the said deed had been given for the bond, Dewa Ram, witness, had stated that respondent had taken possession of land belonging to appellant to the value of 80 or 90 rupees, and that it was incredible that appellant would relinquish land worth 80 or 90 rupees, without recovering the bond or taking some deed of agreement; and that, moreover, Madhubram, respondent's witness, had deposed to appellant's saying that he would pay the amount of the bond, if respondent would forego some part of his claim under it, while Dewa Ram had sworn that no part of it had been liquidated: and on these grounds he decreed the claim.

Appellant now urges that, by the evidence of the trustee of the bond and other persons living in the neighbourhood of the parties, it is proved that the claim at issue had been settled; that, had it not been, a reply would have been filed; that, if the moonsiff were not satisfied on the point, he could have made a local enquiry into it; that wages are due to him, &c.

JUDGMENT.

Debt of wages was not pleaded, in the answer, in bar of this suit; and the only question for consideration is, whether a settlement on account of the bond by execution of the ladavee has taken place between the parties or not. Respondent has neither admitted nor denied the execution of the ladavee and deposit of the bond, as stated by appellant, though he was required to file a reply to appellant's answer; and the moonsiff has not, as he should have done, interrogated his vakeel concerning it, so I have only to look to the evidence of the witnesses. I find that two witnesses were examined on behalf of respondent, one of whom was questioned about the ladavee, while the other knew nothing about it; but, on the other hand, the testimony of the witnesses brought forward by appellant, to wit, Ramrutten Surmah, one of the witnesses to the bond, Kirteenarain Shah, Surroopchund Shah and Kasheenath Shah, affords strong ground for believing that the amount claimable under the bond was taken into account in the execution of the ladavee. However, I pass no decided opinion on the question, deeming the investigation of the case incomplete, in the absence of the enquiry from respondent's vakeel above noticed.

It is therefore ordered:

That the decree of the moonsiff be reversed, and the suit remanded for the enquiry indicated above; that the price of the stamp on the petition of appeal be refunded; and that the moonsiff do pass orders regarding the other costs of this appeal.

The 29th March 1849.

No. 200 of 1848.

Appeal from the decision of Hergouree Bose, Moonsiff of Russoolgunge, dated the 14*th September* 1848.

Hurgopal Surmah, Appellant,

versus

Kasheeeram Deb, Respondent.

Respondent sued for rupees 32, damages for abuse of himself and his mother, in consequence of his having confined appellant's bullock, which had trespassed on and injured his rice crop.

Appellant resisted the claim, denying having abused respondent, and pleading that he had heard that respondent had confined his bullock, under apprehension of its injuring his crop, abusing him for not keeping a watchman, and that he was about to petition the magistrate for release of the animal, and sue for damages for the abuse, when respondent let the bullock go and made up this suit.

The moonsiff (Baboo Hergouree Bose) discredited the evidence of the witnesses for the defence, and held the abuse charged by respondent proved, decreeing eight rupees damages, with full costs.

Appellant now controverts the views taken by the moonsiff of the case.

Judgment.

Appellant's bullock trespassed on respondent's rice crop, and respondent tied the animal up, whereupon appellant abused him in foul and insulting terms, for which damages are sought; and though respondent, in tying up the bullock, usurped powers which are not given to him by any law, still, adverting to the fact that the first act of aggression was on appellant's side, and to the terms of the abuse, which it is unnecessary to repeat, and to the sum awarded as damages, I see no reason to interfere with the moonsiff's decision.

It is therefore Ordered:

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 30TH MARCH 1849.

No. 11 of 1847.

Appeal from the decision of Radhagobind Shome, late Principal Sudder Ameen, dated the 25th June 1847.

Mahomed Kubun, and others, Appellants,

versus

Neerush Beebee, Respondent.

THE circumstances of this suit are stated at page 49 of the printed Decisions of this court during 1846.

It was instituted to recover possession of 37 parcels of land, which are averred to have been given to respondent by her late husband with consent of his co-partners, in 1228 B. S., and to have been placed under the charge of the late Mahomed Ufzul, when respondent went to Mecca in 1242 B. S.

The late sudder ameen (Sirinath Bidiabagish) held the claim true, but was unable to obtain identification of the several parcels of land given to respondent, and he therefore gave her a decree for a proportionate share of the villages in which the lands given are situated.

His decree, however, awarding what was not claimed, was reversed by this court, on the 19th of August 1846, when a careful local investigation was ordered, and the case was transferred to the court of the principal sudder ameen; the office of sudder ameen having been abolished in this district.

The late principal sudder ameen, Rae Radhagobind Shome, held the deed of gift to respondent true. He observed that the deed of sale of mouzah Shunkerpore had not been filed, and that therefore appellants' plea founded on it was groundless; that the plea of lapse of time was contradicted by the evidence of the witnesses and the cultivators' engagements to pay rent; that though the witnesses had not very clearly declared the year of dispossession and the boundaries of the land, still the actual cultivators alone are well acquainted with boundaries, and that therefore no suspicion arose regarding them; that though the ameen had stated that the boundaries recorded in the plaint and chitta, (or land roll,) filed by respondent, were not susceptible of identification on the ground, and that the evidence in regard to one, two, or three boundaries agrees, *(sic in orig.,)* still no suspicion arose from perusal of the chitta, and the state of the land and its boundaries varies, and the boundaries are liable to be changed from the circumstance of the land being in appellants' possession; that Mahomed Unsur had not filed the deed of sale mentioned by him, and that therefore his plea relating thereto appeared to be without foundation; that a deed of gift, similar to that on which this suit is founded, was approved by the Sudder Dewanny Adawlut; that the amount of mesne profits, which was not

well ascertained, could be determined in execution of the decree; and that the evidence adduced by appellants could not stand in competition with the foregoing reasons, and thus he decreed possession to respondent, with costs, providing that the amount of mesne profits should be ascertained in execution of the decree.

Appellants now urge that neither is the possession declared by respondent proved, nor the boundaries of the parcels of land claimed identified, &c. And eleven persons have petitioned, claiming land included in the ameen's chitta.

JUDGMENT.

I do not find, after collation of the boundaries in the plaint with the evidence, that the boundaries and respondent's possession, as stated by her, are satisfactorily proved. The decree of the late principal sudder ameen is manifestly and impudently at variance with the evidence, and the only question is, whether I should dismiss respondent's claim, or remand the suit for further investigation. I take the latter course, because the ameen appears to have acted as partially as the principal sudder ameen. Instead of endeavoring to elicit the truth, he has evidently been engaged for the defence, making up the depositions with the sole desire to defeat respondent's seemingly just claim, and taking down many of them in the absence of her mooktyars, and adding and altering dates, &c.

IT IS THEREFORE ORDERED:

That the decree of the late principal sudder ameen be reversed, and the suit again remanded, that the orders of this court, dated the 19th of August 1846, be fully carried out. The stamp price of the petition of appeal, will be provided for in the future decree of the principal sudder ameen.

ZILLAH TIPPERAH.

PRESENT: T. BRUCE, ESQ., JUDGE.

THE 5TH MARCH 1849.

Case No. 29 of 1847.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 16th September 1847.

Pauchcowree, for himself and as heir of Ramanund, deceased, pauper, (Plaintiff,) Appellant,

versus

Rumeezoollah and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 355-10-2.

This is a suit for possession of two petty independent talooks in pergunnah Gopalpore Mirzanuggur, with mesne profits.

The plaintiffs, Pauchcowree, and his brother, Ramanund, since deceased, alleged that the talooks were leased by Ramanund to Assabodeen and Fakeerchand, on the 21st Sawun 1247 B. S., for a period of four years.

The defendants affirmed that the talooks were sold, not leased by Ramanund to Assâbodeen, Fakeerchand, and Pauchoo, on the 28th Bysack 1248 B. S.

The present suit was instituted on the 16th June 1846; another, founded on the same cause of action, instituted in the moonsiff's court on the 19th September 1844, having previously been dismissed on default.

The principal sudder ameen gave judgment for the defendants, chiefly on the ground that the plaintiffs had failed to prove their case; and I am of opinion that his decision was just and proper.

The only evidence filed by the plaintiffs in the court below, connected with, or of date subsequent to the alleged lease, consists of the following documents: a farming kubooleeut, purporting to have been granted to Ramanund, by Assabodeen and Fakeerchand: a ryuttee pottah, and a few receipts for rent, dated 1247, purporting to have been granted by the same parties as the kubooleeut: copy of the moonsiff's order, dismissing the former suit, on default: and copy of a petition filed in the collector's office by Assabodeen, Fakeerchand,

and Pauchoo, praying to have their names registered as proprietors of the talooks; which petition was struck off the file, in consequence of the alleged vendor (Ramanund) having denied the transfer of the talooks to the petitioners.

The farming kubooleeut, on which the claim may be said to rest, has not been registered: there are no names of witnesses at the usual place; but on the margin, at one side, there is some writing which the plaintiffs affirmed to be the remains of the signatures of the subscribing witnesses: the paper is much torn at that place, but there are traces of one name; there could never have been three names, however, as the plaintiffs alleged, there is not sufficient space. The principal sudder ameen refused to summon any witnesses to the execution of this document; but in appeal, the appellant was given an opportunity of producing his witnesses, both on that point, and also on the point of possession by the opposite party as lessees; he failed to do so however. I reject the document, as of no value. The ryuttee pottah and receipts for rent, I also reject, as much too suspicious to be acted upon. I do not believe that the defendants would have permitted any such documents to remain in the hands of the ryuts, or, supposing they had done so, that the ryuts would have given them up to the plaintiffs: and, which is perhaps still more against them, no mention was made of them in the former suit. The moonsiff's order, dismissing the former suit in default, tells as much against, as for the appellant. The copy of the petition filed in the collector's office, although it shews that the registry of the petitioners' names as proprietors of the talooks, was opposed by Ramanund, shews also that the plea set up by the defendants, is not of recent origin: and it appears that the plaintiffs, although thus early made aware of the claim advanced by the defendants, allowed upwards of two years to elapse before instituting their case in the moonsiff's court; that they then permitted the case to be dismissed on default; and that above another year elapsed before they petitioned to be allowed to institute the present suit as paupers. Appellant was allowed time for the purpose of establishing his plea, that Ramanund was under charge of the collector's nazir, as a defendant in a summary suit, at the time he is said to have executed the bill of sale filed by the defendants; but no evidence on the point has been adduced. Some documents were procured in appeal from the collector's office, bearing Ramanund's signature, in order to compare it with the signature on the bill of sale; but not only these signatures, but others which are undoubtedly genuine, differ from one another, even to the letters used in writing the name. In appeal, a decision of the moonsiff is filed by appellant, dated 14th February 1848, reversing a summary award for rent in appellant's favor; but it is insufficient to affect the merits of the case.

The decision of the court below is affirmed, and the appeal dismissed, with all costs.

THE 6TH MARCH 1849.

Case No. 15 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 13*th June* 1848.

Khajeh Alimoollah, (Plaintiff,) Appellant,

versus

Gour Chunder Pal and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 3,397-3-8.

This suit was instituted on the 16th July 1847, for the recovery of arrears of rent of a putnee talook, after crediting the defendants with the sale proceeds of the tenure.

The claim is founded on a kubooleeut, purporting to have been executed in the year 1222 B. S., by certain ancestors of the defendants, in favor of Meer Ashroff Ali, zemindar of the 16 gundahs 2 krants share of pergunnah Buldakhal. The plaintiff is proprietor of the 7 gundahs, 2 cowrees, 2 dunts, 3 dools share of the pergunnah, which share he acquired by purchase in 1239, and to which he affirms the talook belongs, having been created subsequent to the transfer of that share from the original 16 gundahs 2 krants share.

The principal sudder ameen gave judgment for the defendants, on the ground that the talook being in the 16 gundahs 2 krants share of the pergunnah, and the plaintiff having only acquired a fractional portion of that share, he could have no claim to the entire rent of the talook: and further, that plaintiff had failed to prove that either the defendants or their ancestors had ever paid rent to plaintiff, or had ever entered into engagements with him for the rent.

The plaintiff appeals from this decision; and, with a view to make it appear that the principal sudder ameen was wrong in affirming that the talook belonged to the 16 gundahs 2 krants share, he enters into a detailed account of the circumstances under which the separation of the shares took place, giving the date of that separation. From this it appears that Meer Ashroff Ali, in whose favor the kubooleeut purports to have been granted, was sole proprietor of the 16 gundahs 2 krants share until the year 1209, when he sold a fractional portion of it to one Hafizoollah, retaining the remainder in his own possession as the 7 gundahs, 2 cowrees, 2 dunts, 3 dools share, now the property of plaintiff; and that in the year 1222, thirteen years after the separation of the shares, he created the tenure, the rent of which is the subject of this suit.

This plea, however, is fatal to the appeal; for the kubooleeut, the document on which the claim rests, sets forth that the tenure was created by Meer Ashroff Ali, *as proprietor of the* 16 *gundahs* 2 *krants share*, in the year 1222: the claim, and the evidence on which it is founded, are thus at variance, and altogether inconsistent: the claim is advanced on the plea that the talook was created in the plaintiff's

share of the pergunnah, thirteen years after its separation from the 16 gundahs 2 krants share: the evidence goes to shew that it was created in the 16 gundahs 2 krants share.

The appeal is dismissed, and the decision of the court below affirmed, with costs.

THE 7TH MARCH 1849.

Case No. 26 of 1849.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 12th August 1848.

Bishen Peeriah and others, (Claimants,) Appellants,

versus

Ranee Kuteeanee, and afterwards Baboos Pertabchunder and Issurchunder, (Plaintiffs,) and Gunga Dass Chukerbutty and Bishno Churn Mozumdar, (Defendants,) Respondents.

SUIT (in appeal) laid at Company's rupees 1,220-12-4.

This suit was instituted on the 26th March 1845, for the recovery of arrears of rent, under the terms of a talookdaree lease, granted by Ranee Kuteeanee to the defendant in the year 1244 B. S., whereby the rent of the talook became liable to enhancement at the rate of Sicca rupees 64 per droon, for all land, ascertained by actual measurement, to be in excess of the estimated area.

The principal sudder ameen decided that the defendants were liable for an increase of rent at the rate specified, on droons 6-4-17, from the date of a notice issued under Sections 9 and 10, Regulation V. of 1812, and gave judgment accordingly.

The claimants appeal on the ground that they have a joint interest with the defendants in the land. They affirm that their own talook, and that of the defendants, originally formed one and the same tenure,—talook Santa Kirtee; and that the defendants' talook was formed out of it, not, however, by the entire separation of any particular lands, but only by investing the defendants with a certain interest in a given quantity of land.

The claim was advanced in the court below, but was rejected, and very properly so, in my opinion.

It appears from the leases of the claimants and the defendants respectively, that talook Santa Kirtee originally consisted of droons 97-13-9-2, from which were separated, in the year 1242 B. S., droons 4-14-15, leaving droons 92-14-14-2, in possession of the claimants; the droons 4-14-15 being converted into a separate tenure, as talook Kalee Seeb Radha, and leased to the defendants. The claimants wish to make it appear that the separation of tenures in 1242, did not extend to a division of lands, but only to an adjustment of the rent; and that the land in dispute remained in the joint

occupation of the claimants and the defendants. To establish this point, they file some ryutteekubooleeuts dating from 1244 to 1252, and a pottah of 1249, in favor of the collector, for some ground in the vicinity of his cutcherry; but the kubooleeuts, to say nothing of the suspicion with which such documents must be received, make no mention of the land being in the joint occupation of the parties; and the pottah makes no mention of any such talook as Santa Kirtee. The documents of earlier date are irrelevant to the point at issue, the question for determination having nothing to do with the early history of the lands, but being confined to the plea that no separation of lands took place in 1242,—a plea in direct opposition to the title deeds of both parties, and, for that reason, not to be admitted, except on the most irrefragable evidence. An ameen deputed to make a local enquiry reported in favor of the claimants; but his report was entirely based on the evidence of a few witnesses, who, from the nature of their testimony, which went back to the transactions of a period long antecedent to the year 1242, must have been freely instructed by the claimants as to the evidence they were to give.

The claimants lay stress on a decision of the register's court, of the year 1810; but that document proves that, with the exception of some land attached to the salt agent's house, the tenures out of which it is affirmed the present talooks were created, were not, even at that early period, joint and undivided as regards the land.

The decision of the principal sudder ameen is affirmed: costs of appeal payable by appellant.

THE 13TH MARCH 1849.

Case No. 20 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated 20th July 1848.

Maharajah Kishen Kishore Manick, (Plaintiff,) Appellant,

versus

Kadir Buksh, (Defendant,) Respondent.

SUIT laid at Company's rupees 3,769-8.

This suit was instituted on the 23rd July 1847, to recover possession, with mesne profits, of droons 6-8 of land, which the plaintiff claims as forming a part of his zemindaree, but which the defendant affirms to be rent-free.

The principal sudder ameen dismissed the claim, because the land exceeded 100 beegahs in extent, on the ground that a suit for more than that quantity of rent-free land was not cognizable, unless instituted by the Government.

I am of opinion, however, that the principal sudder ameen has mistaken the principle by which he ought to have been guided in the case. It is not a suit to resume a rent-free tenure, but only to

recover possession of land which the plaintiff affirms to be a part of his zemindaree, and as such to have been in his possession up to the year 1256 Tipperah, corresponding with the year 1253 B. S., since which period the rent has been withheld by the defendant on the plea that the land is rent-free.

If the plaintiff can establish his case, he is clearly entitled to a decree, without reference to the quantity of land in dispute. Had the suit been brought to resume an invalid rent-free tenure, it would have been properly dismissed.

The decision of the court below is annulled, and the suit remanded for investigation on the above principle. Costs to be adjusted on the termination of the suit. The value of the stamp on which the petition of appeal is written, will be refunded.

THE 14TH MARCH 1849.

Case No. 7 1849.

Regular Appeal from a decision of Nubkishen Sein, Moonsiff of Pauchpookooriah, dated the 20th December 1848.

Rammanick Dass, (Defendant,) Appellant,

versus

Kaleechurn Sein, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 16-5-10-1. This is an action for the recovery of a sum of money paid by plaintiff into the collector's treasury, on account of the defendant Rammanick, to save a talook, of which the parties are joint proprietors, from being brought to sale for the recovery of arrears of rent due to Government, as proprietors of the 8 annas share of pergunnah Buldakhal.

The plaintiff obtained a decree for a part of the claim, on the 13th July 1848; but the moonsiff's decision was annulled in appeal, and the case remanded for re-investigation, to give appellant an opportunity of producing the witnesses named in a petition, on which no definite order had been passed.

After the remand, appellant was allowed ample time for the purpose specified; but all he did was to cause the examination of one witness, who happened to be present at the monsiff's court in another case; and the evidence of that one witness was in favor of the plaintiff's claim, which was again decreed in part.

No reason being given, in appeal, for the neglect on the part of the defendant, and the moonsiff's decision being just and proper, both in relation to the evidence adduced by the plaintiff, and as respects the practice of the courts, the appeal is dismissed with costs.

THE 15TH MARCH 1849.

Case No. 25 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated the 15th August 1848.

Government, (Plaintiff,) Appellant,

versus

Ramlochun Mozemdar and others, (Defendants,) Respondents.

THIS is an appeal from an order of the principal sudder ameen, fixing the rent of a dependant talook, which had previously been declared liable to an enhancement of rent, at Company's rupees 360-6-9.

The appeal is preferred on the grounds that the assessable area of the talook has been fraudulently reduced by the respondents keeping a large proportion of the land out of cultivation since the suit was instituted; and that the rates reported by the ameen are lower than those of the surrounding country.

The former plea was advanced in the court below, while the ameen was yet employed in making a local investigation; and by an order, dated the 25th July 1848, a reference was directed to be made to this court, on the subject, but, apparently from an oversight, the order was never acted upon. The objection to the rates would not appear to have been advanced before; but, as the principal sudder ameen refused to allow appellant's pleader to have a copy of the ameen's report, on plain paper, to enable him to prepare a statement of objections to it, which refusal was the subject of appeal to this court, at the time the case was decided, there are sufficient grounds for admitting the plea now.

Under these circumstances and as there is some reason for believing that the pleas are not advanced without good cause, inasmuch as the talook was assessed by the revenue authorities in the year 1839 at rupees 1,001-7-4, after a detailed field measurement, the proceedings of the court below must be considered to have been conducted without due attention to the interests of appellant.

The principal sudder ameen's order of the 15th August 1848, is therefore annulled, and the case remanded for disposal after consideration and investigation of the merits of appellant's objections, as detailed above.

The usual order for the return of the value of the stamp, on which the petition of appeal is written, will issue.

THE 15TH MARCH 1849.

Case No. 6 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated the 3rd April 1848.

Gourchunder Bhuttacharj and Nelcomul Bhuttacharj, (Defendants,) Appellants,

versus

Khajeh Abdool Ghunee, for Dhun Beebee and others, (Plaintiff,) Respondent.

THIS is a suit for mesne profits, with interest.

On the 13th September 1836, the plaintiffs, as proprietors of the 8 g, 2 c, 1 k, 3 d, 4 d, share of pergunnah Buldakhal, sued the defendants, and others of whom the defendants are the representatives, in the court of the principal sudder ameen, for possession of 8 droons 4 kanees of land, of which they alleged they had been dispossessed by the defendants in Maugh 1233 B. S., (January and February 1827.)

The defendants claimed the land as forming two dependant meerasee talooks, the proprietory right in which they had acquired by purchase from the heirs of Dagunram Deo and Sumbhonath Deo, the original talookdars, in the years 1223, 1235, and 1237 B. S. One of the talooks, they affirmed, was in the 8 g, 2 c, 1 k, 3 d, 4 d, share of the pergunnah, the property of the plaintiffs; the other, in the 8 annas share, the property of Government; each talook containing 4 droons 2 kanees of land. They stated further, that they had been dispossessed by the revenue authorities, who had declared the land to belong to the 8 annas share of the pergunnah, and as such liable to assessment under the provisions of Section 5, Regulation IX. of 1825.

On the 28th June 1838, the plaintiffs were nonsuited, because it appeared that the land had actually been declared liable to assessment by the revenue authorities, as forming a part of the 8 annas share of the pergunnah.

On the 30th September 1839, the plaintiffs appealed against the decree of the revenue authorities to the court of special commission; and on the 19th January 1843, the decree was annulled on a point of law, but without a decision on the merits, Regulation IX of 1825, being held inapplicable to the case. The special commissioner's decision contained the usual order relative to the refund of collections to the former occupants, whoever they might be; but the party, to whom the refund was to be made, was not named; indeed the court do not appear to have been aware whether the land had or had not been brought under attachment; the order having been conditional on such attachment having taken place. Neither was any order given for the restitution of the land to any particular party.

Subsequently to the decree of the revenue authorities, viz. on the 13th July 1842, the resumed land had been leased to the defendants for twenty years, together with some other land; but on the receipt of the special commissioner's decision, the resumed land was ordered to be released. The land actually resumed, could not be identified; but a piece of land equal in extent to the *quantity* resumed, was taken from that in possession of the defendants, and made over to the plaintiffs: the amount collected from the land, subsequently to the decree of the revenue authorities, having previously been carried to the credit of the plaintiffs, in liquidation of arrears of Government revenue.

On the 12th March 1847, the plaintiffs instituted the present suit, to recover mesne profits from the defendants, for the period during which they had been wrongfully kept out of possession by the defendants, prior to the attachment of the land by the revenue authorities, viz. from Maugh 1233 to Bhadoon 1243. Their former suit was for possession; but they do not sue for possession now, on the plea that they have already been put in possession by the revenue authorities, under the decree of the special commissioners.

The pleas of the defendants were to the same effect generally as in the former suit; but they pleaded further, *inter alia,* that the present suit would not lie, the point at issue in the former suit being still undecided.

The principal sudder ameen gave judgment for the plaintiffs, chiefly on the ground that the main point at issue between them and the defendants had been decided by the special commissioners, when they directed restitution of the land and payment of the amount collections to the plaintiffs.

From this decision, I dissent. I am of opinion that the decision of the special commissioners in no way affects the point at issue between the parties; and that, until that point be judicially determined in a suit brought to establish the right of the plaintiffs to possession of the land in dispute, their right to mesne profits cannot be considered. And on that point there can be no adjudication in the present suit, either with reference to the nature of the claim or to the valuation of suit.

The plaintiffs appealed to the court of special commission against the decree of the revenue authorities, and the revenue authorities, by restoring the land to them and giving them credit for the collections made during the attachment, must be held to have recognized them as zemindars; but all this is nothing to the point. The special commissioners did not enter into the question at issue between the plaintiffs and the defendants; they simply annulled the decree, as being founded on a law inapplicable to the case; leaving matters as they existed prior to the decree: and the acts of the revenue authorities, subsequent to the decision of the special commissioners, were purely ministerial; they conveyed no new rights to the plaintiffs.

And how did matters stand as between the plaintiffs and the defendants, prior to the decision of the special commissioners? Why, the plaintiffs admitted that the land had been in possession of the defendants since the year 1233 B. S., a period of sixteen years: and the defendants pleaded their right to possession, as proprietors of two separate talooks, in two separate zemindarees. In the claim for mesne profits, is involved the question,—whether the land in dispute belongs to the 8 annas share, or to the 8 g, 2 c, 1 k, 3 d, 4 d, share of the pergunnah, or partly to the one and partly to the other, and whether it be land, to the immediate possession of which the plaintiffs are entitled, or talookdaree land.

I annul the decision of the court below, and nonsuit the plaintiffs with all costs.

THE 16TH MARCH 1849.

Case No. 27 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated the 6th April 1848.

Kaleenath Surma, pauper, (Plaintiff,) Appellant,

versus

Rajah Kishen Kishore Manick, the Collector of Tipperah, and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 3,894-13-9.

This suit was instituted by appellant on the 8th April 1847, to obtain the reversal of an order of the revenue authorities, under which certain of the respondents were admitted to engage for the revenue of a resumed invalid rent-free tenure; the claim being founded on the plea that appellant has a right of settlement in virtue of his right of property in the land.

The court below rejected the claim, as not cognizable by the courts under Section 15, Regulation VII. of 1822, inasmuch as the grant under which the land was held prior to resumption, had been made by a zemindar, and not by the ruling power or an officer of Government.

The principal sudder ameen has altogether misunderstood the law on which his decision is based. The former part of Section 15, Regulation VII. of 1822, declares settlement officers competent to try and determine claims to property and possession, in resumed mehals formerly held under grants from the ruling power or the officers of Government; and to give possession to the party who may appear to have the best title, and to conclude a settlement with him, leaving other claimants to establish their claims by a regular suit in the civil court. The latter part of the Section provides that such power of trying claims, and giving possession to the party, who may appear to have the best title, shall not extend to other resumed

tenures, "the settlement of which shall ordinarily be made with the parties in possession." This is all that the Section contains.

The claim, which relates only to the question of proprietary right, being clearly within the jurisdiction of the civil court, the decision of the principal sudder ameen is annulled, and the case remanded for investigation on the merits.

Appellant will not be chargeable for stamp duty on the petition of appeal.

THE 17TH MARCH 1849.

Case No. 31 of 1848.

Regular Appeal from a decision of Cazee Mahomed Ali, Principal Sudder Ameen, dated the 16*th September* 1848.

Moodoosoodun Gupt, (Plaintiff,) Appellant,

versus

Abdool Shikhdar and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 569-3-4. This is a suit for mesne profits, with interest.

Appellant states that during his minority, viz., in Assar 1240 B. S., he was dispossessed by certain of the respondents, of 15 droons 12 kanees of land in a joint ancestral zemindarry, on the plea that the land had been sold by appellant and his two brothers to the said respondents. The zemindary having been sold by auction for the recovery of arrears of Government revenue, in Sawun 1241 B. S., he does not sue for possession, but he brings this action now that he has attained his majority, to cancel the alleged sale of 1240, to the extent of his interest in the land; and to recover mesne profits, for the period intervening between the alleged date of that sale, and the date of sale of the zemindarry.

This is the fourth time the case has been before this court in regular appeal, it having been thrice remanded. The claim was first nonsuited by the court below: then dismissed: then decreed: and now again it has been dismissed.

The reasons given by the principal sudder ameen for dismissing the claim, on the last occasion, are as follow:—*First*, that the foundation of a claim for mesne profits, being the right of possession, and the present action not including a claim for possession, the claim for mesne profits cannot be admitted; *secondly*, that appellant had not proved the extent of his interest in the zemindary: *thirdly*, that it appearing from the plaint, that appellant had not been in possession, after attaining his majority, his claim for mesne profits cannot be recognized; the nature of his interest in the zemindarry being only determinable by possession; *fourthly*, that suit is barred by lapse of time, upwards of twelve years having elapsed from date

of dispossession to date of suit; and the only evidence adduced by appellant in support of his plea of minority, being the testimony of two witnesses; *fifthly*, that in the absence of dakhilas, or receipts for rent, bearing the signature of the respondents, the enquiries of an ameen do not form sufficient grounds for awarding mesne profits; *sixthly*, that the ameen says nothing in his report, relative to the nature of appellant's interest in the zemindarry.

These reasons for rejecting the claim are futile. With regard to the *first*, if mesne profits would have been recoverable, had the sale of the zemindarry not taken place, they must be equally recoverable notwithstanding the sale, being for a period anterior to the sale, and appellant (it is for the present assumed) having been a minor at the time of sale. With regard to the *second* reason, it is sufficient to say that the extent of appellant's interest in the zemindarry, as asserted in the plaint, has never been disputed; and that appellant was never called upon to prove it. The *third* reason involves the untenable doctrine that possession by a minor is no possession, and that proprietory right depends upon possession. The *fourth* reason implies that a plea of minority cannot be proved by only two witnesses; for no objection is raised to the character of the evidence in itself. Nor do I see that the evidence is open to any objection. The principal sudder ameen, when he formerly decreed the claim, gave full credit to it. If considered insufficient, further evidence might have been required. And although the case has been pending since the year 1845, and the respondents have been again and again called upon to disprove the plea, they have failed to do so. The *fifth* reason forms no ground for rejecting the claim. The respondents do not deny that they enjoyed the rents during the period in question. And the principal sudder ameen himself admits that, after so great a lapse of time, it is not to be expected that receipts should be found in the hands of the ryuts. Besides, the land being still in the occupation of respondents, and appellant advancing no claim to possession, it is no matter of surprise that the ryuts should not give up their receipts. The *sixth* reason is absurd; the ameen not having been desired to enquire into the point. Had he enquired into it, he would unquestionably have been suspected of malpractices.

Such of the respondents as have appeared at previous stages of the case, plead the sale of the land to them by appellant and his brothers, appellant not being at the time a minor; but although the suit has been pending since July 1845, and although respondents have repeatedly been called upon to prove their plea, and have been fined three times on failure to do so; the only evidence of any kind which they have adduced, is an unregistered document, purporting to be a bill of sale executed by appellant and his brothers. And even this, notwithstanding all that has been done with a view to enable them to establish their plea, and the opportunity they have

enjoyed of doing so, they have not proved. Moreover, they have failed to appear in appeal.

Appellant's minority, up to the period of sale of the zemindarry, having been established, the plea of lapse of time falls to the ground, and the sale of appellant's share of the property becomes void.

Under these circumstances, the decision of the lower court must be annulled, and judgment given in favor of the appellant, against Brumoollah, one of the principals to the transaction of 1240 B. S., and the heirs of the others, for mesne profits for the period for which they are claimed, at the rate set down in the ameen's report; with interest on the mesne profits, from date of institution of suit to this date, and on the aggregate thereof, together with all costs from this date.

THE 29TH MARCH 1849.

Case No. 32 of 1849.

Regular Appeal from a decision of Moonshee Ali Newaz, Moonsiff of Ameergaon, dated the 15th January 1849.

Poshoram Doss, (Defendant,) Appellant,

versus

Rammohun Manjee, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 12-9-9.

This is an action for the recovery of money advanced by the plaintiff to the defendant, on loan, but without a written acknowledgment.

The moonsiff gave an *exparte* decree in favor of the plaintiff.

Appellant (defendant) pleads that process was not duly served, and, as it appears from the record, that the person by whom it is said to have been served, was not examined on the subject, as required by Clause 2, Section 21, and Clause 3, Section 22, Regulation XXIII of 1814; and further, that as the evidence of only one of the persons whose names appear on the certificate of service, was taken, the moonsiff's decision must be annulled as incomplete, and the case remanded for investigation *de novo*.

It is to be observed that, although evidence was only taken relative to the issue of the prescribed *notice*, the decision states that it was taken relative to the issue of the *proclamation* also.

The value of the stamp, on which the petition of appeal is written, will be refunded.

THE 29TH MARCH 1849.

Case No. 33 of 1849.

Regular Appeal from a decision of Moonshee Ali Newaz, Moonsiff of Ameergaon, dated the 15th January 1849.

Ramdoss Manjee, (Defendant,) Appellant,

versus

Ramchurn Bhordar, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 15-13-1.

This is an action for the recovery of money advanced by the plaintiff to the defendant, for the conveyance of salt from Chittagong to Naraingunge, which contract the defendant failed to fulfil.

The moonsiff gave judgment for the plaintiff *exparte.*

Appellant (defendant) pleads that the process was not duly served: and, as it appears that the evidence of the person said to have served it, was not taken as required by Clause 2, Section 21, and Clause 3, Section 22, Regulation XXIII of 1814, the moonsiff's decision must be annulled as incomplete, and the case remanded for investigation *de novo.*

It is to be observed that, although the moonsiff only took evidence relative to the issue of the prescribed *notice,* he states, in his decision, that evidence had been adduced relative to the issue of the *proclamation* also.

The value of the stamp, on which the petition of appeal is written, will be refunded.

ZILLAH TIRHOOT.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

THE 7TH MARCH 1849.

No. 586 of 1847.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 13th August 1847.

Musst. Doorga Chowdrain, mother and guardian of Gobind Loll, minor, (Plaintiff,) Appellant,

versus

Musst. Beebee Moorteza *alias* Beebee Begumee Khoobloll and Mihurchund Raee, (Defendants,) Respondents.

THIS was an action instituted by the plaintiff on the 17th May 1845, to obtain possession, agreeably to a thika potta with peshgee, of an 8 anna share of mouzah Usdhurpore, chuk Lalla, pergunnah Hajeepoor, action being laid at Company's rupees 799-13-9; but the suit was dismissed by the principal sudder ameen on the ground that, in a suit instituted by one of the defendants, Mihurchund, to obtain possession as purchaser of the whole 16 annas from another of the defendants, Musst. Beebee Moorteza, and tried at the same time with this, a decree had been already given to the plaintiff in that suit for the whole mouzah.

JUDGMENT.

It appears that an appeal having been preferred to the Sudder Dewanny Adawlut from the decision of the principal sudder ameen in the case of Mihurchund, on the decision of which this suit hinges, the order of the principal sudder ameen in the former having been reversed on the 30th December last, that case was remanded (*vide* Decisions of the Sudder Court for December last, page 901) for re-trial, wherefore the same course must be followed in this case, which is hereby accordingly returned to be re-tried with that remanded by the Superior Court, the customary order being at the same time issued for the refund of the value of stampt paper.

THE 15TH MARCH 1849.

No. 239 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1st March 1848.

Baboos Loll Doss and Hirdeh Loll Doss, (Defendants,) Appellants,

versus

Khilput Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 1,708-12-9-12, principal and interest on bond.

This and the nine cases which follow, Nos. 240, 241, 242, 243, 244, 245, 246, 247, and 248 of 1848, are all suits instituted on different dates during the year 1843, by the plaintiff in this and four other suits, and by Sonephul Sahoo as plaintiff in five others (those two persons being own brothers and partners in banking,) to recover loans of different amounts to the several defendants (who are also all mutually related to each other,) on ten separate bonds filed by the plaintiff and alleged to have been executed on different dates from 1245 F. S. or 1838 E. S. to 1249 F. S. or 1841 E. S. The suits were originally instituted according to their respective amounts in the courts of the principal sudder ameen, the sudder ameen, and the moonsiff of Bowareh, but were all, with reference to their relating to the same cause of action and between the same parties, eventually referred for trial to the principal sudder ameen. For the same reasons all the appeals are now brought on for hearing and decision together, the judgment given in one governing that of all the rest.

The defendants, denying the loan and execution of the bond in two of the cases, admit both in the remaining eight, and, pleading payment in the latter, produce a farghuttee on stampt paper and registered, bearing date the 10th Bhadon 1249 F. S. or 31st August 1842, purporting to be a general acquittance in full of all demands and on account of all money transactions and therefore inclusive of the amounts of the bonds both singly and collectively up to that date; but the principal sudder ameen, besides considering the payment of the loans and execution of the bonds to be satisfactorily proved, was of opinion that the farghuttee was not a genuine document but fabricated. He accordingly decreed each suit on the 22nd May 1844, in favor of the plaintiffs for the amount claimed, which decisions were upheld on appeal by the late judge on the 30th July 1845; but the defendants having preferred a special appeal, the suits were remanded and eventually struck off the file conformably to Act XXIX. 1841, with advertence to a default of the plaintiffs, committed in the court of first instance, and regarding which, though represented in the appellate court, proper orders were not passed. The plaintiffs again brought the actions *de novo* on the 28th August 1847, and the defendants not having appeared or answered in any of the

newly instituted suits, the principal sudder ameen on the 1st March 1848, again decreed the ten suits in favor of the plaintiffs, for the reasons assigned in his decision of the 22nd May 1844, with the additional argument in support of its correctness, that the defendants had failed to defend the new action.

The chief reason of appeal is that the first principal sudder ameen was not justified in trying all cases as relating to the same cause of action. His doing so was otherwise illegal and irregular, because the moonsiffship of Bowareh being within the jurisdiction of the second principal sudder ameen, the trial of the suits by the first principal sudder ameen is opposed to Act IX. 1844, and a vernacular proceeding of the 19th June of that year. In reply to which it is urged by respondents that, agreeably to the Circular Order of the 12th March 1841, this appeal is not admissible.

JUDGMENT.

The first principal sudder ameen, having tried and decided the suits first instituted before a division of jurisdiction had been made agreeably to Act IX. 1844, was clearly the proper tribunal to re-try the same causes when remanded and after they were brought on *de novo.* On that score, therefore, the appellants' objection cannot be admitted. Had it been a valid plea, it should have been urged in the court of first instance. But, independently of the appellants having left themselves by their own *laches*, with advertence to the Circular cited by the respondents, without a remedy, I entirely concur in opinion with the principal sudder ameen both that the payment of the loan and execution of the bond in each of the ten suits is satisfactorily established by trustworthy evidence, and that the farghuttee produced by the defendants is not a genuine but fabricated instrument. Had it been the former, it is consistent with probability to suppose that the bonds would have been returned. I uphold the decision of the first principal sudder ameen in this and the nine cases which follow, and dismiss the appeal preferred in each, with costs chargeable to the appellants.

THE 15TH MARCH 1849.

No. 240 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1*st March* 1848.

Baboo Loll Doss and others, (Defendants,) Appellants,

versus

Khilput Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 1,021, on bond.

JUDGMENT.

FOR reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellants.

THE 15TH MARCH 1849.

No. 241 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1*st March* 1848.

Baboo Loll Doss and others, (Defendants,) Appellants,

versus

Khilput Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 319-7-8, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellants.

THE 15TH MARCH 1849.

No. 242 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1*st March* 1848.

Baboo Loll Doss and others, (Defendants,) Appellants,

versus

Sonephul Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 124-3-9, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellants.

THE 15TH MARCH 1849.

No. 243 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1*st March* 1848.

Baboo Loll Doss, (Defendant,) Appellant,

versus

Sonephul Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 160, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellant.

THE 15TH MARCH 1849.

No. 244 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1st March 1848.

Lalljee Doss, for himself and as guardian of Omrao Sing Doss, minor son of Nundee Doss, deceased, (Defendant,) Appellant,

versus

Khilput Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 622-2-7, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellant.

THE 15TH MARCH 1849.

No. 245 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1st March 1848.

Lalljee Doss, for himself and as guardian of Omrao Sing Doss, minor son of Nundee Doss, deceased, (Defendant,) Appellant,

versus

Sonephul Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 56-3-10, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellant.

THE 15TH MARCH 1849.

No. 246 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated 1st March 1848.

Lalljee Doss, for himself and as guardian of Omrao Sing Doss, minor, son of Nundee Doss, deceased, (Defendant,) Appellant,

versus

Sonephul Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 264-8-6, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellant.

THE 15TH MARCH 1849.

No. 247 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1st March 1848.

Pearee Loll Doss and Sunt Loll Doss, (Defendants,) Appellants,

versus

Sonephul Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 160, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellants.

THE 15TH MARCH 1849.

No. 248 of 1848.

Regular Appeal from a decision of Moulvee Niamut Allee Khan Bahadoor, First Principal Sudder Ameen, dated the 1st March 1848.

Pearee Loll Doss and Sunt Loll Doss, (Defendants,) Appellants,

versus

Khilput Sahoo, (Plaintiff,) Respondent.

SUIT to recover Company's rupees 286-13-5, on bond.

JUDGMENT.

For reasons of decision, *vide* those recorded in Case No. 239 of 1848. The judgment of the principal sudder ameen is upheld, and the appeal dismissed, with costs payable by the appellants.

THE 15TH MARCH 1849.

No. 582 of 1847.

Regular Appeal from a decision of Syud Ashruf Hossein, late Second Principal Sudder Ameen, dated the 9th August 1847.

Hurruknarain Suhye, and after his decease Hurdeonarain Suhye and others, his heirs, and Bujrungee Saha Suhye, (Defendants,) Appellants,

versus

Ramnath and others, (Plaintiffs,) Respondents.

IN this suit, instituted on the 18th August 1846, the plaintiffs sought to recover Company's rupees 1,800 out of Company's rupees 2,005-3-9, zur-i-peshgee, with interest, agreeably to a thika lease, and Company's rupees 491-12, principal and interest of arrears due from ryots, total Company's rupees 2496-15-9.

The defendants, having taken Company's rupees 1,800, zur-i-peshgee from the plaintiffs, gave them a farming lease of an 8 anna share of mouzah Nugwah and a 4 anna share of mouzah Tuttiah, pergunnah Bissareh, for five years from 1248 to 1252 F. S., on a yearly jumma of 200 rupees, for which he gave the usual pottah on the 26th Jeit 1247. The stipulations of the lease were these. First.—That the farmer should pay yearly out of the jumma 109 rupees to the collector as Government revenue, and the remaining 91 rupees to the maliks, the farmer taking whatever other profits were realized from the property. Secondly.—The maliks agreed that whatever should be realized in any year less than the sum of rupees 344-3-3, from the nukdee jummabundee according to a *dhudha,* or memorandum, would be deducted from the profits. Thirdly.—On the expiry of the thika lease, whatever should remain due from the ryots should be made good by the maliks with the peshgee to the farmer, and that the lease should remain in force till the repayment of the peshgee Agreeably to this arrangement the plaintiffs, paying both the Goverment revenue and the malikanah, remained in possession till 1251 F. S. In 1252 F. S., however, the maliks, colluding with their putwarree, opposed their (the plaintiffs') collecting, and although they appointed other omlah but little was collected, deducting which little, there remained Sicca rupees 415 due from the ryots for 1252 F. S., and the maliks, contrary to stipulations of the lease, dispossessed them, without repaying the peshgee, from 1253 F. S. The plaintiffs also allege that they paid the Government revenue, 109 rupees, and the maliks 91 rupees for 1252 F. S.

The defendants plead in answer that the plaintiffs have realized every year from the produce Sicca rupees 617-5-6, which is interest at the rate of 1 rupee 8 annas per cent. and their suit, agreeably to Section 9, Regulation XV. 1793, is inadmissible. The total too of rupees 344-3, which the plaintiffs give of the nukdee jummabundee, is not correct. The plaintiffs have the dhudha which they signed, let them produce it for the perusal of the court. It also appears from the wording of the plaint, that the sum of 344 rupees is exclusive of bhowlee rents and sayer collections; the plaintiffs not having given any specification of those items, on this account too their claim is untenable. . Under these circumstances as the actual amount of jummabundee is disputed, mofussil enquiry is requisite, and if it turns out with reference to the dhudha given by them to the plaintiffs that the bhowlee and nukdee collections exceed the amount in the dhudha, such excess amount should, according to the above Regulation, be credited in liquidation of the principal. The statement also of there being arrears due from the ryots is false. Moreover, when the lease was written out, 50 beegahs for maliks' khoodkasht and 30 beegahs of indigo land let to the Serryah factory, were left out: notwithstanding this, the plaintiffs retain in their own possession 9 beegahs, 17 cottahs, and 10 dhoors of the former,

and 15 beegahs of the latter, or a total of 24 beegahs, 17 cottahs, and 10 dhoors. In short, of the whole malikanah due for five years the plaintiffs have only paid 91 rupees for 1248 F. S., 24 rupees 2 annas for 1249 F. S., and 35 rupees in 1250 F. S., or total rupees 150-2 and by this calculation they (the defendants) have to receive from the plaintiffs rupees 556-9-10.

The principal sudder ameen, after taking proofs from both parties and after mofussil investigation, gave the plaintiffs a decree for the principal and interest of the peshgee, with interest from 1253 F. S., with costs proportioned to the extent to which their claim was proved. Rejecting the report of the ameen, he decided that, as the nukdee jumma was fixed at 344 rupees in the thika pottah admitted by the defendants, there could be no dispute on that point. There remained then only the bhowlee jumma and sayer, and it may be gathered from the wording of the deed that it was very small, and that as there seemed no probability of realizing a great deal from those sources, their jumma was not specified in the pottah. After payment, therefore, of the revenue, village expences, and maliks' right, what the plaintiffs have received is not excessive interest, and the plaintiffs' proofs of payment of the maliks' right are unquestionable. Under these circumstances, as the defendants retained possession of the property themselves, they are bound to pay the peshgee, but it is not consistent with justice to decree the amount alleged to be due from ryots, because there was no reasonable excuse for the plaintiffs leaving arrears due from them from the beginning of the year without taking steps to recover them.

The grounds of appeal are, that in the jummabundee papers for five years which the plaintiffs gave to the ameen, although the item of sayer is not inserted, yet the bhowlee jumma, exclusive of the nukdee, is put down 539 rupees, 7 annas, 6 pie; but notwithstanding such admission on the part of the plaintiffs of the bhowlee jumma, the principal sudder ameen has unfairly deprived them (the appellants) of that item. They also filed a petition praying to give a list of the witnesses named in the margin of the pottah, and acquainted with the circumstance, they pleaded, of excessive interest, but the principal sudder ameen rejected their petition. In regard too to the dhudha, if the plaintiffs will produce it, the real state of the jummabundee will be apparent, while, in respect of the proof of payment of maliks' right, the plaintiffs have given no other proof than the evidence of two or three of their own dependents. Had they really paid it, there would assuredly be some acknowledgment or tunkha to show, and if, according to their false statement, it had been paid yearly, why was there no wasil-bakee to produce? They (the appellants) have given full proof of the real nukdee and bhowlee jumma being rupees 617-5-6, beside which the principal sudder ameen has rejected the ameen's report without reason, althought he plaintiffs made no objection to it.

To this the respondents reply that if a calculation be made including both nukdee and bhowlee jummas, it will be clear that they (respondents) have not received interest at the rate of even 1 per cent.; and if the defendants have made it appear otherwise by the tutored testimony of a few of their own dependents, that circumstance will not entitle their statement to credence. They deny too, ever having received the dhudha, which the appellants did not give them at the time of writing the pottah; while in regard to the appellants' objection of their (respondents') being unable to show any tunkha or receipt, it appears that, in a suit to recover on bond in which Rajcoomar Singh Mahajon was plaintiff and the appellants defendants, the plaintiff admitted having received 123 rupees at different times from them (the respondents) agreeably to a tunkha of the appellants; and besides the receipts filed with the record they have another of the year 1250 F. S., in which there is no mention of any bukya; and in the statement which they (respondents) have filed of payments made during the five years they held the farm, every single item of payment of every kind is put down in detail. Moreover, the dehatee papers which the appellants gave to the ameen showing a greater jumma, will be found on inspection to have been altered and erased,—their allegation too regarding khoodkasht and indigo lands having been disproved by evidence.

JUDGMENT.

In this suit the principal sudder ameen had to determine whether Section 9, Regulation XIII. 1793, was applicable to this case or not, and whether the conditions inserted in the thika pottah had been fulfilled. On almost all the important points, without the determination of which a fair and satisfactory judgment cannot be arrived at, I consider the investigation of the principal sudder ameen to be singularly imperfect and defective, all that is clear being that the whole of the Government revenue has been paid, which fact is not disputed by the defendants. In regard to the applicability or otherwise of the regulation cited, and on which stress is laid in the defence, the principal sudder ameen's decision is silent. He merely records an opinion that with reference to the amount of the produce the plaintiffs have not received excessive interest; though as he does not state what he finds the amount of produce to be, while without assigning any reason he rejects the report of the ameen deputed to ascertain that point and to which the plaintiffs themselves did not object, it is difficult to ascertain by what calculation he determined that point.

In regard too to the maliks' due for five years, for a total payment of 455 rupees, proof is requisite, but the amount for one year only is clear and undisputed. The principal sudder ameen merely records a general remark that the plaintiffs have fully proved such payment, without however entering into any detail of proof, which was indis-

pensable, because some of the receipts filed are denied or objected to by the defendants. I remand the case to the present 2nd principal sudder ameen to be retried with advertence to the above observations, and the usual order will issue for refunding the value of stampt paper.

THE 21ST MARCH 1849.

No. 605 of 1848.

Regular Appeal from a decision of Munneeroddeen Hossein, Moonsiff of Muhwa, dated the 2nd September 1848.

Suhduwun Rae, (Defendant,) Appellant,

versus

Rambuksh Ram, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 22nd June 1848, to recover from the defendant Company's rupees 76-5-3, the principal and interest of a loan, on bond dated 13th Bhadoon Soodhee 1245 F. S., or 2nd September 1838 F. S., and alleged to have been executed by the latter, the loan being repayable by the poornomasee of Kartick 1246 F. S. On the expiry, however, of the stipulated period without repayment of the amount, and in consequence of the plaintiff's importuning him, the defendant mortgaged rupees 12, 4 annas, rent due to him by ryots of mouzah Delawurpore Muhnee, for which he, on the 4th Maugh 1247 F. S., gave a tunkha, or assignment, in liquidation of the interest accruing, but the defendant dispossessed the plaintiff from the latter property by a case under Act IV. 1840, from the 10th Kartick 1255 F. S.

The defendant denying the claim *in toto*, besides urging that he himself can write and praying comparison of handwritings, pleads that the suit has been instituted from malice on the part of the plaintiff; but the moonsiff, deeming both the bond and tunkha (which latter is on stampt paper) established by evidence, gave the plaintiff a decree,—the only matter worth notice pleaded in appeal being, that the moonsiff did not, as he had prayed, compare his handwriting with the signature of the bond and tunkha.

JUDGMENT.

After comparison of the signature of the appellant on his vakalutnameh in both courts with that both on the bond and tunkha, which are found to correspond almost exactly, the decision of the moonsiff is affirmed, and the appeal dismissed without notice to the respondent, with costs chargeable to the appellant.

THE 21ST MARCH 1849.

No. 604 of 1847.

Regular Appeal from the decision of Moulvee Niamut Allee Khan Bahadur, First Principal Sudder Ameen, dated the 19th August 1847.

Gholam Ilahee Khan, (one of the Defendants,) Appellant,

versus

Gopal Doss and Shaikh Assudoollah, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs on the 4th August 1846, to obtain possession of the 4 annas 2 pie share of mouzah Burreree, pergunnah Tirsut, principal and dependencies, action being laid at Company's rupees 521-2-6, or three times the sudder jumma, and Company's rupees 532-15-9, for mesne profits from date of sale to that of suing, or total Company's rupees 1,054-2-3.

The right and interest of the defendant, Gholam Ilahee Khan, in the above property, was sold in execution of a decree held by one Govindpershad Mahajon, by the collector on the 17th May 1845, and purchased by the two plaintiffs jointly, and after confirmation of the sale, the usual istahar was issued for putting the purchaser in possession, which, however, could not be effected, owing to the opposition of the defendant, Gholam Ilahee Khan, and his wife, Musst. Zebun, on which account this action was brought against them both. But as the property was sold for arrears of Government revenue on the 30th April 1847, or after the suit had been instituted, the plaintiffs filed a supplementary plaint, withdrawing their claim to possession and seeking only to obtain surplus proceeds of sale.

Musst. Zebun answered by pleading that her husband had mortgaged 3 annas 11 gundahs of the property by a deed of bye-mokasa, in lieu of her dower, according to which she holds possession, and Gholam Ilahee Khan has no right whatever to the property; and the answer of Gholam Ilahee Khan was that the whole 16 annas of mouzah Burreree was the property of his father, Morad Allee Khan, who left two widows, Musst. Buttun and Musst. Dahoo, and he has no claim, and as he is not in possession, any demand from him for wasilat is improper. He also stated that a case was still pending in the principal sudder ameen's court, in which Gholam Aheeah and others, heirs of Morad Allee Khan, being plaintiffs, and Musst. Oolfut, defendant, it was sought to cancel the above partition—no adjustment of the right and interest of the heirs having taken place. Moreover, the wasilat account is not correct.

The principal sudder ameen gave the plaintiffs a decree for 3 annas, 15 gundahs, 13 cowrees of the disputed property, on the ground that in the case of Gholam Aheeah and others, decided in his court, the share of Gholam Ilahee Khan had been determined by a futwa of the law officer to be to that extent, and Musst. Zebun had

failed to produce any bye-mokasa, and in conformity with the above decision, the principal sudder ameen directed that the plaintiffs should receive from the collector their ratable share of surplus sale proceeds, the amount of wasilat being left to be determined by enquiry in executing the decree.

In appeal, it is contended by Gholam Ilahee Khan that he did not acquire 6 gundahs and something more of his share, which had been the property of his mother, Musst. Dahoo, until after her death which took place subsequently to the sale in 1845, and to that extent he prays reversal of the judgment of the lower court, while in regard to wasilat, he urges that he has not been all along in sole possession, Musst. Dahoo and Oolfut and other shareholders having also been so, and therefore he ought not to be held responsible.

JUDGMENT.

The single question to be settled in this case is, what was the share of Gholam Ilahee Khan, when the sale took place, and this point has been conclusively determined on the best proof in the lower court. The appellant having been unable to adduce any other in appeal, I affirm the decision of the principal sudder ameen, and dismiss the appeal, with costs payable by the appellant.

THE 28TH MARCH 1849.

No. 397 of 1848.

Regular Appeal from a decision of Sheik Derasut Allee, Sudder Ameen of Mozufferpore, dated the 31st May 1848.

Oomanath Thakoor, (Defendant,) Appellant,

versus

Rughoobur Dutt Panday and Umrit Loll Panday, (Plaintiffs,) Respondents.

ON the 5th August 1847, this action was brought by the respondents as plaintiffs to obtain possession of 2 annas, 13 gundahs, 1 cowree, and 1 crant of the 4 anna share of mouzah Kosumputtee, and 4 annas, 13 gundahs, 1 cowree, and 1 crant of the 7 anna share of mouzah Kunour, pergunnah Tirsut, by cancelling a thika pottah; action being laid at Company's rupees 575-9-5½, including three times the sudder jumma, wasilat, and, by a supplementary plaint, rent for 1252 F. S.

Gopeemohun Panday, elder brother of the plaintiffs, for himself and as their guardian, having taken rupees 900 advance from the defendants, gave them a thika lease of a 4 anna share of mouzah Koosumputtee, and a 7 anna share of mouzah Kunour, for a period of nine years from 1244 to 1252 F. S., with stipulation in the pottah that the farm should continue in force until repayment of the peshgee. After the plaintiffs, however, attained their majority, they

represented to the defendant that their brother, as guardian, was not authorized to take the advance and give the lease, and they tried to induce him to relinquish possession, but the latter refusing instituted a suit under Act IV. of 1840, and was by that suit maintained in possession. One Chummun Loll, who held a conditional mortgage of the share of Gopeemohun, filed a suit, and, getting a decree, obtained possession, and when the lease expired, they asked him to take from him their share of the peshgee and to return the pottah, which, however, he refused. They therefore pray to be put in possession, after paying rupees 640 for their two shares.

In his answer the defendants urged that, although in the decree of the additional judge, it was ordered that the lease should continue in force until the repayment of the peshgee, yet the plaintiffs, having dispossessed him in 1253, obliged him to seek redress in the foujdarry court, and that he was on the point of suing them in a regular action for profits, in apprehension of which they anticipated him by bringing this action. He could have no possible objection to receive the peshgee, while in regard to the plaintiff's claim for wasilat for 1253 and 1254 F. S., he can produce papers in which they had admitted their being in possession from 1253. Moreover, the plaintiffs' citing the decision in the Act IV case as proof of his possession is not to the point, because that decision relates to time during the continuance of the lease or up to 1252 F. S., and not beyond it; and regarding the plaintiffs suing for rent for 1252 F. S., he has their own farighkhuttee, or acquittance, to establish its entire payment.

The sudder ameen, finding it established by proof that the defendant had been in possession from 1252 to 1254 F. S., without paying rent, and after calculation of the amount receivable and paid by each party, decreed that the plaintiffs should be put in possession on paying rupees 295, rent for the years 1252, 1253, and 1254 F. S., deducting the share of the elder brother.

It is pleaded in appeal that the supplementary plaint was not to rectify an omission, but to change the nature of the claim. Besides which the death of one of his vakeels had not been intimated to him. It was, moreover, apparent, from the copy of a petition presented by the respondent, Rughobur Dyal Panday, on the 19th of December 1846, and copies of depositions of principal ryots, that the fact of his being out of possession, and his opponents being in possession has been admitted. To this the respondents plead in reply that, by the decision in the Act IV case, on which the judgment of the moonsiff of Coelee, upholding the appellant's possession during 1253 and 1254 F. S., and rejecting their (the respondents') pleas, was founded, the appellants' arguments have been refuted.

JUDGMENT.

The only point to be determined in this appeal is, whether the appellant or respondents were in possession from 1252 to 1254 F. S.

It is distinctly proved, by an unreversed judgment of the moonsiff of Coolee, that during the years in question the appellant held possession. The decision, therefore, of the sudder ameen, which cannot be called in question, is affirmed, and the appeal dismissed, with costs chargeable to the appellant.

THE 28th MARCH 1849.

No. 497 of 1848.

Regular Appeal from a decision of Munneeroodddeen Hossein, Moonsiff of Muhwa, dated the 25th July 1848.

Radakishun, (third party,) Appellant,

versus

Rajcoomar Singh and six others, (Plaintiffs,) and Musst. Sheo Koonwur, wife of Ramsuhye, deceased, (Defendants,) Respondents.

SUIT to obtain possession and to effect mutation of registry in the collector's books on the ½ anna share of mouzahs Guroul and Lodeepore and chuck Biyas and Talchurra, principal and dependencies, chukla Gurjoul, pergunnah Bissareh, action being laid at Company's rupees 123-7-8, or three times the sudder jumma.

This and the appeal immediately following, (No. 498 of 1848,) relate to the same cause of action, and are accordingly brought on for hearing together, the reason of decision in one being equally applicable to the other.

The suit was instituted on the 12th November 1847, and the plaint alleges that Ram Suhye, the deceased husband of Musst. Sheo Koonwur, in consideration for Company's rupees 1,401, conditionally mortgaged to five of the eight plaintiffs the above property, the deed of mortgage being dated the 15th of January 1844, and notwithstanding that the usual case was brought under Regulation XVII. of 1806, Ram Suhye did not pay the amount, and accordingly a foreclosure was ordered on the 25th August 1847, after which two of the plaintiffs took three others into partnership with them.

The defendant did not appear or answer; but the appellant, coming forward as third party, pleaded that Ram Suhye had sold the property in dispute to him on the 28th July 1846, by a cowallah of that date, on which date the foreclosure had not been made, and therefore a foreclosure subsequently to his purchase is not admissible.

The moonsiff decreed in favor of the plaintiffs, on the ground that the objector's bill of sale is of subsequent date both to that of the mortgage and that on which the Regulation XVII. case was instituted, and under such circumstances the objector's purchase of property so mortgaged was not legal. The fact, too of Radakishun's being aware of the mortgage is apparent from the tenor of the fysileh in the case of Mewah Lall, plaintiff, *versus* the present plaintiffs as defendants, as well as from copy of an ikrarnameh, both of

which the plaintiffs have filed. Indeed, the alleged sale is a mere fiction, as the purchase money was not paid, which is proved by copy of Ram Suhye's own plaint in the case, in which he sued Radakishun to have the same cowallaeh cancelled on that very ground, that the purchase money had not been paid.

In appeal, it is contended that the plaintiffs, who were related to each other, have, unknown to the appellant, fabricated the deed of mortgage, and as he purchased the property before the order for foreclosure, the moonsiff was not justified in decreeing for the plaintiff. Moreover, he (appellant) was not aware of the Regulation XVII. case, and therefore his not having preferred objections in that suit cannot prejudice his right, that the precedent cited by the plaintiffs is not to the purpose, and that he had one to bring forward in the case of Rampershud and others, plaintiffs, *versus* Oodunsing, which, however, the moonsiff did not receive from him.

JUDGMENT.

Nothing has been urged in appeal, sufficient to impugn the correctness of the decision of the lower court, which is therefore affirmed and the appeal dismissed with costs.

THE 28TH MARCH 1849.

No. 498 of 1848.

Regular Appeal from a decision of Munneerooddeen Hossein, Moonsiff of Muhwa, dated the 25th July 1848.

Radakishun, (Plantiff,) Appellant,

versus

Musst. Sheo Koonwur, wife of Ram Suhye deceased, (Defendant,) and Rajcoomar Singh and seven others, objectors, (Respondents.)

SUIT to obtain possession and to effect mutation of registry on the property litigated in the preceding case as per cowaleh, dated 28th July 1846. Action being laid at Company's rupees 123- 7- 8, or three times the sudder jumma.

JUDGMENT.

With reference to the decision recorded in the preceding case, No. 497 of 1848, the judgment of the lower court is affirmed, and the appeal dismissed with costs.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 13TH MARCH 1849.

No. 7.

Regular Appeal from a decision passed by Syed Salamut Alli Khan, Sudder Ameen of Mozufferpore, dated the 28th November 1843.

Jokun Rawut and six others, (Plaintiffs,) Appellants,

versus

Humerah Rawut, vendor, Bunsee Singh, and three others, purchasers, (Defendants,) Respondents.

THIS suit was instituted by the appellants against the respondents, claiming the right of pre-emption of 1 pie within 2½ pie portion of the whole village chuck Mheilah, pergunnah Mheilah. The action is laid at Company's rupees 500, the amount of purchase money specified in the bill of sale.

The plaint sets forth: the whole village is a joint property, and held under six shares; in the sixth share, the vendor holds 2½ pie portion, and the remainder of that village appertains to the plaintiffs; that the vendor secretly sold 1 pie of his portion to the other defendants, purchasers, on the 4th of September 1842, for the sum of rupees 54, but with a view to bar claim of pre-emption, rupees 500 were specified in the bill of sale. On the 8th of Assin 1250 Fuslee the circumstance of the sale came to their knowledge. Agreeably to law, they instantly performed the tullub moaseebut and ershaud, and the amount of purchase was taken and tendered to the vendor and the purchasers, which being refused is the cause of the suit.

The purchasers in their answer alleged the purchase money had not been tendered to them by the plaintiffs. The property had been first tendered to the plaintiffs, who declining to purchase it, they became purchasers thereof, the whole amount of Company's rupees 500 as specified in the bill of sale was paid and taken by the vendor. They reside in the village Poonourah which adjoins village chuck Mheilah, and thereby hold a right of pre-emption of sales effected in that village.

The vendor in his answer alleged the sale of the property was first tendered to the plaintiffs, on their refusal it was sold to Bunsee Singh and others.

The sudder ameen dismissed the suit, on the grounds: the performance of tullub moaseebut by the plaintiffs was not established by the evidence of any one of the plaintiffs' witnesses. In respect to the ershaud, and of taking the purchase money and demanding pre-emption of the property, there was a discrepancy in the evidence of the witnesses, in respect to date, and to which of the purchasers the money was tendered. And the suit was instituted after an elapse of one month from the date of the bill of sale.

Against this decision the appellants urged: it being joint property, their right to pre-emption is undoubted. The sale was effected secretly to strangers, and the instant they heard of it they performed the tullub moaseebut and ershaud, and established the same by evidence of their witnesses. The purchasers are strangers and they did not establish their allegation that the property had been first tendered to them (the appellants) for purchase, prior to purchase being effected by them.

The respondents in answer alleged there were discrepancies in the evidence of the appellants' witnesses, and they did not establish they had performed the tullub moaseebut and ershaud agreeably to law.

The appeal came before Mr. D. Pringle, judge, whose decision, dated 16th December 1844, is thus passed:—

The sudder ameen appears to have dismissed the case under three points; first, that the appellants had not established that they had, on hearing of the sale, performed the tullub moaseebut; second, regarding conveying of the purchase money to the purchasers there were discrepancies in the evidence of the witnesses; third, the suit was not instituted within the fixed time of one month. He was of opinion with respect to the first point that the respondents were bound to prove the appellants had not performed the tullub moaseebut, and not for the appellants to prove they had performed it; to the second point, the evidence of witnesses regarding the taking of the purchase money to the purchasers is sufficient, and there are no discrepancies; to the third point, this suit was not instituted within one month. Ordered, the appeal be dismissed, and the decision of the sudder ameen be affirmed."

The appellants filed, on 9th January 1845, an application for review of judgment, on the only point on which the judge had dismissed their appeal that they had not instituted the suit within one month; but on inspection of the papers it will appear that the bill of sale is dated 4th September of 1842, and the petition was filed on the 30th of September 1842, whereby there was a lapse of twenty-six days only in the institution of the suit.

For permission to review judgment, an application was made, under date 27th of May 1846, to the Sudder Dewanny Adawlut, which Court, under date 12th of June 1846, granted permission.

The case was transferred to the principal sudder ameen for investigation, who passed a proceeding, in which he doubted his authority to try a case which had been passed by the judge, and moreover, whether the mere point of review of judgment or the whole matter of the suit is to be investigated. The case was recalled by the judge, and transferred to this court in December last.

The respondents in their answer allege the point brought forward by the appellant is entirely new, it was not urged in the original or appeal case, if it be true, it is to be borne in mind they have not

established the performance of the tullub moaseebut and ershaud according to law.

COURT.

On a careful perusal of the papers of the case, it is not ascertainable how the judge came to the results passed in his decision; yet the only point to be now taken into consideration is, whether the plea now urged by the appellants be true and admissible. The bill of sale is dated 4th of September 1842, and the petition of institution of the original suit appears to have been filed in court by the appellants themselves on the 30th of September 1842. On the 9th of November the petitioners were called, and were not in attendance; on the 28th of November they were again called, and not in attendance; on the 10th of December they were again called, when Muckun Lall answered, he had been constituted their attorney, whereon an order was passed to number the petition and to transfer it to the court of the sudder ameen for investigation. This order is written on the face of the petition, and authenticated by the initials of the judge; the dates of filing, and non-attendance of the petitioners are written on the back, and not authenticated. Both the sudder ameen and the judge seem to have been guided by the order on the face of the petition, with respect to the date of institution of the suit. By implication it may be considered the suit was not really instituted until the 10th of December 1842. The appellants in their appeal against the decision of the sudder ameen urged no plea against that point which the judge affirmed, but in that appeal allusion is made that the suit was instituted in December, as expeditiously as they could. Not having urged any plea against the point in their appeal, any favourable circumstance in their behalf cannot be taken into consideration: therefore, ordered, that the application for review of judgment be dismissed, with costs of both courts chargeable to the appellants and the decision of the sudder ameen be affirmed.

THE 20TH MARCH 1849.

No. 10.

Original Suit.

Chund Beenode Opphadeeah, for self and as guardian of Batuck Benode Opphadeeah, his own nephew and minor son of Deehoo Beenode Opphadeeah, deceased, Indurdrooje Opphadeeah, Meidur Opphadeeah, the heirs of Nynanund Opphadeeah, (Plaintiffs,)

versus

Lokermun Opphadeeah, Girjahnund Opphadeeah, Eshreeduth Opphadeeah, principals and heirs, Beerbudur Opphadeeah, deceased, (Defendants.)

THIS suit is to recover the sum of Company's rupees 96,344-8-9, being the principal and interest of mesne profits from 1234 to 1241

Fuslee, on 8 annas share in each of the following properties: talooqah Ashkurrunpore, chukla Gorejole, pergunnah Beesarah, Byjenathpore, purgunnah Ghudeesur, and village Bishenpore Hukimabad, pergunnah Sureesah.

The plaintiffs state, in the plaint, their ancestor, Nynanund Opphadeeah, on the 10th of December 1825, A. D., instituted a suit in the provincial court at Patna, for half of the property above detailed, against Beerbudur Opphadeeah, the ancestor of the defendants, and finally, under date 22nd February 1834, obtained a decree for the same, from the Sudder Dewanny Adawlut, on execution of the decree obtained possession, but the mesne profits thereon have not been paid either to their ancestor or themselves. Although Nynanund Opphadeeah, their ancestor, is still in existence, but from 1245 Fuslee has been in a state of (musloob ul huwas) lunacy, and owing to his old age, the whole of the business is transacted by them. The property originally sued for and obtained being ancestral, therefore sue for the mesne profits agreeably to the accounts specified below.

The defendants plead the ancestor of the plaintiffs is not in a state of (musloob ul huwas) lunacy; therefore the plaintiffs have no right to sue, and the plaint is inadmissible. If he were in a state of lunacy, he would have been placed under the Court of Wards, and that court would have taken the management of the property and carried on suits. Several suits were instituted by the ancestor of the plaintiffs (detailed in the answer) and decrees obtained by him. After the ancestor of plaintiffs obtained a decree for the property, an adjustment of every matter, both in this district and of that in the Nepaul territory, had been effected with him, whose receipt of the same, dated 14th of August 1839, corresponding with the 20th of Sawun 1246 Fuslee, they hold. That this suit is barred by limitation rules, as the suit for the property was decided on the 22nd of February 1834, and this suit was instituted on the 16th of February 1846, and the annual profits of the estate are much less than those exhibited in the accounts of the plaintiffs.

The plaintiffs, in reply to the answer of the defendants, alleged the lunacy of Nynanund Opphadeeah was established, by the court having invalidated the pottahs (or leases) written by him, and giving validity to those written by themselves.

COURT.

In the copy of decision filed there is no mention made regarding mesne profits, it seems therefrom not claimable, as the adverse party appears to have had a claim to a portion of property in the possession of that plaintiff in the Nepaul territory, with which the Sudder Dewanny Adawlut could not interfere; be that as it may, it is first requisite to ascertain in this case, whether the plaintiffs hold a rightful claim to sue. The suit is instituted under the plea that their grandfather, who is still in existence, is in a state of lunacy, that point cannot now be enquired into. Although Clauses

2 and 3, Section 5, Regulation X. of 1793, and Section 2, Regulation VI. of 1822, point out that collectors are to make the first representation of lunacy to the Board of Revenue, &c., that is, when lunatics hold an entire estate, in cases of lunacy of sharers in a joint property, they cannot interfere. If the heirs of lunatics, who are sharers in joint property, mean to deal honestly, they should fairly represent the case of lunacy to the judge, not as a matter of mere notification, to be taken advantage of at some future time, but at the same time pray for investigation into the truth of the matter, under the Regulation above cited, and to be legally permitted to take the management of the property, &c. All assumption of management of the property, even by heirs, without the authority of the Government, or the court, cannot but be deemed illegal. Under this impression this suit is dismissed and the costs chargeable to the plaintiffs.

THE 20TH MARCH 1849.

Regular Appeals from a decision passed by Molovi Neamut Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 3rd June 1846.

No. 523.

Rugbur Race and others, purchasers, (Defendants,) Appellants,

versus

Meidur Opphadeeah, (Plaintiff,) Respondent.

No. 524.

Nynanund Opphadeeah, proprietor and his son, Chunder Beenode Opphadeeah, (third party,) Appellants,

versus

Meidur Opphadeeah, (Plaintiff,) Respondent.

THESE are two appeals from the same decision passed by the principal sudder ameen. The suit was instituted by the respondent for the cancelment of a conditional bill of sale, dated 27th of November 1843, of 2 annas portion of the village Bhykhantpore appertaining to talooqah Ashkurrumpore, chukla Gorejole, pergunnah Beesarah, and for the return of Company's rupees 1,053-7, being amount of purchase money for the aforesaid property, that amount having been deposited by him in court to bar the sale being rendered absolute. That conditional bill being invalid, having been entered into subsequently to his grandfather, Nynanund Opphadeeah having fallen into a state of lunacy, arising from the demise of his son, Deehoo Beenode Opphadeeah, in 1245 Fuslee.

The defendants answered, during the existence of Nynanund Opphadeeah it is not in the power of his son or grandsons to sue for the property. The lunacy of Nynanund Opphadeeah has not been

established in any court. The sum borrowed on the conditional bill of sale was to discharge revenue due to the Government, &c. The conditional bill of sale having been duly registered was made over to them. On expiration of the term, application was made to the court under Regulation XVII. of 1806; and the amount of purchase money deposited in court to bar the foreclosure. That sum belongs rightfully to them.

Nynanund Opphadeeah filed a third party petition, urging: the plaintiff is his grandson, who having committed some evil matter in the Nepaul territory was incarcerated there, and afterwards banished that territory, thereby he has been expelled from his caste, consequently has no claim to inherit any of his property: therefore this suit is not liable to be heard. After having acquired the decree for the 8 annas portion of the property, all the business has been transacted by himself, and not through the medium of his grandsons. His lunacy has not been established in any court. After having obtained the purchase money, he signed the conditional bill of sale, caused it to be registered, and made over to the purchasers. The purchase money, now in deposit in court, having been deposited in his name, be made over to the purchasers.

Chunder Beenode Opphadeeah filed a third party petition, similar to the above.

The principal sudder ameen passed a decree in favour of the plaintiff, for the cancelment of the conditional bill of sale, and for the refund of the money deposited in court, on the grounds: from the several copies of decisions and documents filed by the plaintiff, it appears Nynanund Opphadeeah had not the power to transfer his property or grant leases thereof on advance of money, therefore the lease granted by Nynanund Opphadeeah to Keiwul Kishen from investigation of the moonsiff of Muhwa was made invalid; that decision being appealed from, was affirmed by the judge, and on application for review of that judgment was affirmed. Goburdun Singh, who sued and obtained decrees in the courts of the moonsiffs of Dulsingh Surai and Muhwa, in which cases Nynanund Opphadeeah having been third party, his objections were not attended to; now the points in contradiction thereto, cannot be investigated. The conditional bill of sale of Nynanund Opphadeeah is inadmissible, and invalid. The decision and proceedings filed by the defendants are of no utility, being of a prior date to the decisions affirmed by the judge. Nynanund Opphadeeah having acknowledged the conditional bill of sale to the defendants, they are entitled to the refund of the purchase money, on their suing Nynanund Opphadeeah or all of his heirs.

From this decision the defendants appealed. The declaration of the principal sudder ameen that the conditional bill of sale was invalid, is unjust, as Nynanund was himself the proprietor and had legal right to transfer his property, and write any deed regarding

thereto. The money was borrowed to pay his revenue into the collectorate. He was in his right senses, and the signing of the document was not improper. Nynanund Opphadeeah has several sons and grandsons, and this suit is instituted by one grandson only, who has been expelled from the caste of his brethren: to pass a decree in his favour, is unjust. Nynanund Opphadeeah himself and one of his grandsons have filed third party petitions in this case, and no attention has been taken of them. The decisions of the moonsiffs and of the judges, taken as proof by the principal sudder ameen, have no allusion to this case, because, subsequently thereto, this plaintiff, Meidur Opphadeeah, complained against Nynanund Opphadeeah before the magistrate under Act IV. and appealed to the session court, and all the decisions taken as proofs by the principal sudder ameen in this case, were filed in the Act IV. case, and that judge, Mr. Pringle, affirmed the order of the magistrate, for the possession of Nynanund Opphadeeah until his demise, and that his heirs had no right to possession during his existence. Copy of this decision was filed, but was not taken into consideration. To decree both the property and return of the money deposited, is not just.

Respondent filed no answer. The appeal of the third parties alleges: the decision of the principal sudder ameen is contrary to the practice of the courts and customary usage of the country: decreeing during the existence of the ancestor and the actual proprietor, to set him aside, and to give to a person who has been expelled the caste of his brethren, not entitled to inheritance, the right and title of possession of the property. Several decisions have been filed shewing he is in his senses, and executes his own business, these have not been taken into consideration; and in no one decision filed by the adverse party is it stated that his, Nynanund Opphadeeah's, property was taken from him, and the moonsiff's decision in favour of Goburdun Singh was reversed by the additional judge.

Respondent filed no answer.

Court.

The principal enquiry in every case is first requisite to ascertain whether the plaintiff has a rightful claim to sue and under what grounds. The plaintiff instituted this suit under the plea of lunacy of his grandfather, Nynanund Opphadeeah, which does not appear to have been enquired into, and until so declared under Regulation X. of 1793 and Regulation VI. of 1822, the courts cannot consider any person labouring under such a malady. Although the principal sudder ameen declares, in his decision, Nynanund Opphadeeah had not the power to transfer his property or to grant leases, no decision to that effect is discoverable. The plaintiff not having established any legal right to sue, the principal sudder ameen's decision cannot be upheld, therefore, ordered, decree for appellants,

costs of both courts chargeable to the respondent, the decision of the first sudder ameen be reversed. As Nynanund Opphadeeah has not proved the money deposited by respondent appertained to him, the respondent has liberty to take it out of court.

THE 20TH MARCH 1849.

No. 610.

Regular Appeal from a decision passed by Syud Munneeroodeen Hoosein, Moonsiff of Mhowah, dated the 25th August 1847.

Nynanund Opphadeeah, proprietor, and Seetah Rawut, lessee, third party, (Appellants,)

versus

Goburdun Singh, (Plaintiff,) and

Mr. DeLessert, (Defendant,) Respondents.

THE original suit was instituted by one of the respondents against the other respondent for the arrear of rent and interest thereon, total amounting to Company's rupees 207-1, due on an under lease of 8 annas portion of four villages in pergunnah Beesarah, of which the plaintiff declared himself a lessee.

(For particulars of this case *vide* the printed Decisions of the Zillah Courts for July 1846, zillah Tirhoot, page 72, Case No. 590.)

The second decision of the moonsiff is as follows:—

"The lease of the plaintiff having been written on an inadequate stamp, he, after having obtained the requisite stamp impressed thereon, filed it, and the subscribing witnesses thereon gave their evidence. Seetah Rawut did not file any proof. The defendant has not filed any lease. The denial of Nynanund Opphadeeah, of granting the lease to the plaintiff, cannot be credited in court, because the evidence of the subscribing witnesses to the lease proves the advance had been taken and the lease entered into. On perusal of the decision of the principal sudder ameen in the case of Meidur Opphadeeah, plaintiff, *versus* Rugbur Raee and others, defendants, and several other decisions filed, it appears the plaintiff's lease is correct, and having been in possession from 1247 Fuslee, is proved, therefore the leases granted by Nynanund Opphadeeah to Mr. Holloway and Seetah Rawut can never be sanctioned in court. From perusal of the decision dated 26th of December 1843, of this court in the case of Keiwu Kishun Raee, plaintiff, *versus* Byjoo Raee, defendant, and the appeal decision of the judge, dated 30th of April 1844, case Muna Rawut, defendant, appellant, *versus* Keiwul Kishun Raee, plaintiff, respondent, and other decisions filed by the plaintiff, it appears Keiwul Kishun Raee, as lessee on the part of Nynanund Opphadeeah, instituted two suits. This Goburdun Singh filed a third party petition, urging he was a lessee, and Bhakee Raee filed a third

party petition as a lessee also, and Nynanund Opphadeeah also filed a third party petition. Goburdun, in that case, filed a decision, dated 19th September 1843, passed by the moonsiff of Dulsing Surai, and other decisions, from which it appears the plaintiff was not in possession, and suit was dismissed. On appeal that decision was affirmed by Mr. David Pringle, judge, therefore further enquiry is not necessary.

"Nynanund Opphadeeah had not the power to resume the lands from the plaintiff until he had discharged the advance, or at the expiration of the term, which extends to 1255 Fuslee, and the plaintiff is proved to be in possession, consequently Nynanund Opphadeeah had not the power to grant leases to Mr. Holloway, and Seetah Rawut. The defendant having acknowledged the claim, therefore the decree is passed in favor of the plaintiff."

Against this decision the appellants urged, that the moonsiff in his decision asserts that Seetah Rawut filed no proof. The proof filed by Nynanund Opphadeeah, is also on the part of Seetah Rawut. This plaintiff under this said lease sued in a summary suit for rent in the collectorate, which was dismissed on the 12th of April 1841. Afterwards there was a dispute between the lessees, which was investigated by the collector, who, on the 28th of August 1841, cancelled the plaintiff's lease and affirmed the lease which had been granted by Nynanund Opphadeeah, under his own signature, which decision to this day has not been reversed, therefore the moonsiff had no authority to pass a decree in favor of the lease that had been cancelled. Notwithstanding the summary suit decisions is filed in this case, the moonsiff has not taken any notice thereof. The decision of the principal sudder ameen, which the moonsiff has taken in proof in this case, was taken by the principal sudder ameen from the first decision passed by the moonsiff in this suit, which was reversed and returned for reinvestigation by the additional judge; beside which, the decision of the principal sudder ameen was appealed from and is still pending. In the decision of Mr. David Pringle, judge, it is remarked that under Act IV. the lessee was removed from possession, and that the proprietor, Nynanund Opphadeeah, was to be let into possession, on this ground the suit of Keiwul Kishun Raee, lessee, was dismissed, and that was affirmed by the judge, which is not in support of the plaintiff's claim. Owing to the arrangement in the decision of the moonsiff, the judge considered he had erroneously affirmed that decision, directed the attorney to apply for review of judgment, which was accordingly submitted. The judge not having leisure arising from the investigation of Maharajah's case, and on completion thereof proceeding to another district, the application was taken up by Mr. J. F. Cathcart, judge, and rejected.

The respondent alleged: the documents and proof pointed out in the appeal, are of a former period, and the latter regular suit

decisions having been appealed from, and affirmed by the judge, and the application having been rejected, make all the former decisions void.

Mr. DeLessert filed no answer.

COURT.

Although the several decisions of his own court, and that of the moonsiff of Dulsing Surai, and the appeal decision of the judge, filed in this case, are declared by the moonsiff to be proofs of the possession of the plaintiff, are not considered as such: for in no one of the decisions can it to be traced that the lease had been filed and validity thereof proved by the evidence of the subscribing witnesses thereon. This case was returned to call for the lease, and to prove the validity thereof. It appears the lease had been written on an improper stamp, and after having obtained the requisite stamp impressed thereon, was filed. From the tenor of the evidence of the subscribing witnesses, the payment of advance money was not proved, nor was the entering that deed a legal measure of Nynanund Opphadeeah for the witnesses deposed that Inderdrojee Opphadeeah acknowledged to them the advance money had been received, and he subscribed his grandfather's name to the lease; that Nynanund Opphadeeah, was present, but houl (or in a state of terror) in which state he had been from the time of the demise of his son, Deehoo Beenode Opphadeeah. On such evidence the moonsiff should have made the lease invalid; but taking into consideration the conduct of the grandsons towards their grandfather, Nynanund Opphadeeah, the lease is deemed a fabrication, otherwise it would have been filed in the first instance; and the witnesses have been tutored to give their evidence, as a colouring to the rumour of the grandsons that Nynanund Opphadeeah was in a state of lunacy. Under all circumstances of the case, the lease to Goburdun Singh is declared invalid, consequently the under lease to Mr. DeLessert is also invalid. Ordered, decree for appellants, with costs of both courts chargeable to the respondent, Goburdun Singh, and the decision of the moonsiff be reversed.

THE 20TH MARCH 1849.

No. 611.

Regular Appeal from a decision passed by Munneerooddeen Hossein, Moonsiff of Muhwa, dated the 25th August 1847.

Nynanund Opphadeeah, (Plaintiff,) Appellant,

versus

Mr. F. P. Holloway, afterwards by his attorney, Mr. Macleod, (Defendant,) Respondent.

THIS suit was instituted by the appellant to recover from the respondent Company's rupees 258-4, being principal and interest of

rent due to the 10 annas instalments in the year 1252 Fuslee on account of a lease of 6 annas portion of villages Mohamudpore Gocool and Mohamudpore Lalsa, pergunnah Beesarah.

(For particulars of this case *vide* the printed Decisions of the Zillah Courts for July 1846, zillah Tirhoot, page 73, Case No. 575.)

The moonsiff in the re-investigation again dismissed the case on the same grounds that he did in the first instance.

Against this decision the appellant urged that, having appealed from the decision in favor of Goburdun Singh in Case No. 610, hopes it may be referred to, and deemed a sufficient appeal for this.

The respondent filed no answer.

COURT.

Under the circumstances stated in the decision No. 610, the decision of the moonsiff in this case cannot be maintained, therefore, ordered, the decision of the moonsiff be reversed, and decree for appellant, with costs chargeable to the respondent.

THE 21ST MARCH 1849.

No. 758.

Regular Appeal from a decision passed by Syud Mohamud Mohamid, Sudder Ameen of Mozufferpore, dated the 15*th September* 1846.

Mhanghoo Sahee, hulwahee, (Defendant,) Appellant,

versus

Rheecha Panrai, (Plaintiff,) Respondent.

THE respondent instituted this suit against the appellant to recover from him the sum of Company's rupees 66-15, being the principal and interest due on a bond of rupees 61, dated 4th of Kartick 1253 Fuslee, corresponding with 19th October 1845, to be discharged with interest at the end of the month of Phalgoon of the above Fuslee year, which not having been paid on the demand of payment, this suit is instituted.

The appellant in answer to plaint denied the claim entirely; that he was unable to read or write; the bond he believed to be a fabrication.

The sudder ameen decreed in favor of the respondent on the grounds the subscribing witnesses to the bond deposed to the paying and receiving of the loan, and the appellant having caused his name to be subscribed on the bond.

Against this decision the appellant urged: the witnesses who gave their evidence are residents of different places, and not in the same mullah (or portion of the town) with him; that the sudder ameen did not call on him to prove his allegation and it behoved the sudder ameen to make enquiry in the neighbourhood of his residence respecting the truth of the claim.

The respondent answered: the evidence of the subscribing witnesses to the bond proved his claim, and a decree was passed accordingly in his favor. All the witnesses are residents of Suraheegunge, and well known to both parties. Having denied the bond, the appellant was not called on to prove a negative.

COURT.

The appellant was permitted to file a list of witnesses to prove his business was prosperous, consequently had no occasion to borrow money, did not borrow the money, and the respondent never demanded payment. The evidence of these witnesses adduced no one point favorable to the appellant, it was an entire failure. In lieu of witnesses residing contiguous to his own dwelling and shop, the appellant brought forward witnesses who reside on the opposite side of a bazar of the greatest width in the town of Mozufferpore, and that too, in an oblique direction, so as to leave a space of two or three russees (or 2 or 300 cubits) between the residence of the appellant and the witnesses, who could not possibly be privy to transactions carried on in the appellant's shop. The appellant having failed to establish his allegation, the appeal is dismissed, with costs of both courts chargeable to the appellant. The decision of the sudder ameen is affirmed.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: R. H. MYTTON, ESQ., JUDGE.

THE 29TH MARCH 1849.

Appeal from the decision of Roy Hurrochunder Ghose Bahadoor, Principal Sudder Ameen.

Mohommed Nasym, (Appellant,) Defendant,

versus

Oomdutoonnissa, for self and others, Rugbutoonnissa, ditto, and others, (Respondents,) Plaintiffs.

SUIT for possession of a 1 a. 15 g. 2 c. 2 c. share of mouzah Bazeetpore, *i. e.*, 12 bs. 14 c. 10 ch. out of a total of 14 bs. 11 c. 5 ch. and a 5 a. 8 g. 2 c. 2 c. share of mouzah Mohubbutpore, *i. e.*, 55 bs. 19 c.

Suit laid at value of the land, 581-2-17, mesne profits 217-9-11.

Plaintiffs sued as the lineal descendants of Mehroolla, for the above share of a talooq, which they say was recorded in the name of Kheiroolla at the decennial settlement, but in which his brother Mehroolla had an interest, that Mehroolla's descendants were in possession of their rights down to 1252 B. S., when they were ejected by Nasym and others, defendants.

Nasym denied that Mehroolla had any share in the property, which he asserted was that of Kheiroolla, his own ancestor, solely.

Some of the other defendants confessed judgment.

The case was tried by the principal sudder ameen, who, finding that Mohommed Nasym had, in a deposition given on oath in a case in the year 1831, and in a petition for mutation of names in the collectorate registers, admitted the right of the descendants of Mehroolla, and that the witnesses cited by plaintiffs fully bore out their claim, decreed possession to them against Nasym alone, he appearing in that officer's judgment, the instigator, and principally instrumental in ejecting plaintiffs.

The rest of the defendants he discharged from liability, and dismissed the claim to mesne profits as not proved.

From this decision Nasym appeals, including, among the respondents, those of his co-defendants who had been struck out by the court below.

He urges the following pleas:

1. Plaintiffs have overrated the suit to bring it into the principal sudder ameen's court, by laying it at the value of the land instead of three times the sudder jumma as they ought by Art. 8, Schedule B, Regulation X. of 1829.

2. Mehroolla had no right in the property, and Hameeda Beebee, the person from whom plaintiffs claim immediate descent, never had possession.

3. Hameeda left other heirs besides plaintiffs, who have not sued, and plaintiffs have included, among the defendants, Aboo Mohommed and Sufder, who were minors at the time, contrary to Section 23, Regulation X. of 1793.

4. Jungly, one of the defendants sued, was not alive at the time the suit was instituted.

5. Plaintiffs have omitted from their claims mouzah Talibarya, one of the villages in the talooq, and have therefore split their cause of action.

6. Faqueer Chand and Hulodhor, two defendants, who gave answers confessing plaintiff's right, were anxious to make known to the court that their answers were filed without their knowledge, but plaintiffs would not permit them to do so.

7. Rugbutoonnissa, one of the plaintiffs in this action, cannot claim by inheritance from Hameeda Beebee, as she, Rugbutoonnissa, was only a second wife of Hameeda's husband.

8. I had an essential document to produce, viz., the decision of private arbitrators, and applied to the court below for permission to file a supplementary answer setting it forth, but was refused.

9. Appellant further pleads that his own deposition in another case should not be received as evidence in this, and that the petition for mutation of names may have been filed without his knowledge.

The respondents (formerly plaintiffs,) in their answer to the petition of appeal, prayed that under Construction No. 868, their claim to mesne profits from date of possession to date of decree, may be considered.

JUDGMENT.

The first plea of informality in the institution of the suit is futile, for over-valuation has been held by the Sudder Dewanny Adawlut to be no ground of nonsuit: *vide* Report of Summary Cases, 16th December 1845.

The 4th and 8th were overruled by the principal sudder ameen in interlocutory orders, and those orders confirmed on appeal by my predecessor. They do not therefore require further consideration.

The third plea is not good, as urged by Mohommed Nasym in appeal, the decree not having been passed against those asserted to be minors.

The fifth will not stand, inasmuch as plaintiffs do not assert that any part of their share in the talooq is situated in Talibarya, nor is there any reason to suppose that they contemplate suing for land in that village.

The sixth plea was not urged, as it should have been in the court of first instance, and I find no proof of the names of the persons alluded to having been included in the defendants' for fraudulent purposes.

The seventh is explained away as follows: Hameeda dying, her property went to her husband, from whom Rugbutoonnissa, his other wife, can inherit on his death, which has taken place.

The second and ninth pleas are to the facts of the case. There appears no reason whatever, why a copy of the appellant's own deposition in another case on a point most essential in this, should not be received as proof on the part of the plaintiffs. Appellant Nasym says so plainly in this deposition that "Cazy Mehroolla and others are the talooqdars of mouzah Bazeetpore and Mohubbutpore, that it is astonishing he should have the effrontery now to come forward and deny that Mehroolla had any right therein." A decision in his favor could only be passed at the expense of stamping him as a perjurer.

The claim of the plaintiffs to mesne profits has been dismissed by the principal sudder ameen as not proved.

It is, however, proved that defendants ejected plaintiffs from the property in 1225, and kept them out of it ever since, which is sufficient proof of their claim to mesne profits for that time, and it would have been admitted under Construction No. 868, and according to precedent in Sudder Dewanny Adawlut of February 13, 1848, had the proof on which the plaintiffs' claim rests fixed the responsibility upon Mohommed Nasym alone. It does not, however, do so. It includes other persons, who have been released from responsibility by the principal sudder ameen, and are not here present to join issue on the point. They cannot now be brought in again without an appeal on the part of plaintiffs from the part of the decision which released them. This has not been preferred.

The decision of the principal sudder ameen is therefore affirmed.

The 31st March 1849.

Appeal from the decision of Roy Hurrochunder Ghose Bahadoor, Principal Sudder Ameen.

Konuckmony Dossy, (Plaintiff,) Appellant,

versus

Seeta Ram Coond's heir, Madhob Chunder Coond, and Manuel DaCosta and others, (Defendants,) Respondents.

Suit laid at Company's rupees 4,784-6-7½.

For reversal of a sale of land and houses standing thereon, in execution of a decree, and for mesne profits of a portion.

Plaintiff, the widow of Suroop Chunder Dey, deceased, alleges that the land in question was bought by her brother, with her father's money, from DaCosta, the defendant, and that her father built her a house thereon to live in, that she subsequently obtained a pottah from the collector of Punchanogram in her own name, and that the bills for the revenue thereof have never been drawn out in any other, that in fact the land and houses are her own, and not her husband's property.

This property has been the subject of long litigation in various forms.

By the plaintiff's account it appears that one Gooroodas got it sold as the property of Suroop Chunder Dey, by the sheriff of Calcutta, when it was purchased by Thakoordass. Konuckmony, the plaintiff in this suit, sued for reversal of that sale in the Supreme Court, and was nonsuited.

Then Seeta Ram Coond had it attached in satisfaction of a decree of the zillah court against Suroop Chunder Dey. Plaintiff and Thakoordass both objected to the sale, and the former, in the court of first instance, and the latter, in appeal, succeeded in getting it released.

Seeta Ram then sued Gooroodass and Thakoordass, the creditor at whose instance it was sold by the sheriff, and the purchaser at that sale, to establish his right to sell as the property of Suroop Chunder. He obtained a decree. Gooroodass then sued Konuckmony on the sheriff's sale, but was cast.

Seeta Ram, having thus got rid of the claims of Gooroodass and Thakoordass, took out execution, and the sale was advertized, when plaintiff's objection to the sale proceeding being overruled, she instituted this suit. She alleges that she has retained possession throughout, of all but 3 beegahs and 10 cottahs now in the seizin of Tarny Churn, the purchaser at the sale in execution of Seeta Ram's decree.

The defendant, Seeta Ram Coond and his heir, relied on the sale in execution as good and valid, and urged several arguments to show that Konuckmony's was only a benamee title, and that the real proprietor was Suroop Chunder Dey.

A copy of the evidence of Manuel DaCosta, taken in one of the preceding suits, was filed. He asserts in this that he sold the property to Suroop Chunder Dey. On this and a copy of a report made by Mr. Trower, a late collector of Punchanogram, stating that the revenue of the property was paid subsequent to 1238 B. by Suroop Chunder Dey, the principal sudder ameen mainly rests his decision against the plaintiff.

In appeal plaintiff insists upon the deed of sale, the collector's pottah, and the bills for revenue being in her name, as sufficient proof of the property being her own. She asserts that DaCosta was tampered with, and that the collector's omlah were so also.